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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~864.~~ 344

PRYOR N. COLEMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TENNESSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

FILED MARCH 13, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 664.

PRYOR N. COLEMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TENNESSEE.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TENNESSEE.

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1 STATE OF TENNESSEE:

Supreme court at Knoxville.

Be it remembered that at a regular term of said supreme court, opened and held at its court-rooms in the city of Knoxville, for the eastern division of the State aforesaid, on the first Monday of May, 1876, being the 1st day of the month, a cause brought by appeal from the criminal court of Knox County, in said State, in which Pryor Coleman was pl'ff in error, and the State of Tennessee def't in error, was heard and determined, and judgment rendered therein by said supreme court, the records of which, now on file in the clerk's office of said supreme court, are in the words and figures following, to wit:

Caption.

Transcript of the proceedings had and entered of record, and now on file, in the cause of the State vs. Pryor Coleman, for murder.

2 Be it remembered that at a criminal court began and held for the district of Knox, at the court-house in Knoxville, on the fourth Monday, it being the 28th day of September, one thousand eight hundred and seventy-four.

Present and presiding, the Hon. M. L. Hall, judge of the said criminal court for the district of Knox, in the State of Tennessee.

Venire.

The court was duly opened by M. D. Swan, high sheriff of Knox County, in the State aforesaid, who returned into court the State's writ of venire facias, from which it appears that at the July term, 1874, of the county court of Knox County, Tenn., said court had appointed the following persons, good and lawful men, citizens of Knox County, to serve as jurors at the present term of this court, to wit: 1, M. J. R. Gentle; 2, B. G. Barnitze; 3, W. A. A. Conner; 4, P. M. George; 5, Oliver Chesney; 6, F. Coram; 7, John Lester; 8, Jos. Long; 9, P. L. Hall; 10, Dickson Brown; 11, David Gallaher; 12, J. A. Ruble; 13, J. W. Ventis; 14, John E. Johnson; 15, James Humphrey; 16, David Thomas; 17, J. C. Giffin; 18, Ja's N. Wilbite; 19, John Rose; 20, H. L. Clift; 21, E. W. Armstrong; 22, R. H. Epps; 23, A. F. Smith; 24, H. H. Larew; 25, Z. T. Hure; all of whom were summoned by said
3 sheriff, to attend at the present term of this court, and thereupon, from the jurors summoned as aforesaid, the court proceeds, as the statute in such case made and provided directs, to select and empannel a grand jury for said district of Knox at this term, when are elected, 1, M. J. R. Gentle; 2, John Rose; 3, H. L. Clift; 4, W. A. A. Conner; 5, Dixon Brown; 6, J. C. Giffin; 7, A. F. Smith; 8, B. G. Barnitze; 9, F. Coram; 10, J. N. Wilbite; 11, P. L. Hall; 12, David Gallaher; 13, Joseph Long; of whom the court appoints W. A. A. Conner foreman, who, together with the other said grand jurors, having been empanelled, sworn, and charged according to law to enquire for the body, Knox County, in the district of Knox aforesaid, retired to consider of presentments and indictments.

Green B. Burleson, a deputy sheriff for Knox County, having been summoned for that purpose, was sworn to attend the grand jury.

FRIDAY, *October 2nd*, 1874.

Court met pursuant to adjournment. Present & presiding, the Hon. M. L. Hall, judge, &c.

Indictment.

THE STATE
vs. } No. 1769. Murder.
PRYOR COLEMAN.

4 The grand jury appeared in open court in a body, and by their foreman returned into court a bill of indictment against the defendant for murder; which bill of indictment is in the words and figures as follows, to wit:

STATE OF TENNESSEE,
District of Knox:

Criminal court, September term, 1874.

The grand jurors for the State of Tennessee and district aforesaid, being duly summoned, elected, empanelled, sworn, and charged to enquire for the body of the county of Knox and State aforesaid, upon their oath aforesaid, present that Pryor Coleman, late of said county, laborer, on the 7th day of March, 1865, with force and arms, in the county of Knox, unlawfully, wilfully, wickedly, maliciously, deliberately, premeditatedly, feloniously, and of his malice aforethought, did make an assault in and upon the body of Mouring Ann Bell, in the peace of God and the State; and him, the said Pryor Coleman, with a certain pistol, which he then and there held in his hand, loaded with cap, powder, and leaden ball, unlawfully, wilfully, wickedly, maliciously, deliberately, premeditatedly, feloniously, and of his malice aforethought, did draw
5 upon, level on, and discharge in and upon the body of the said Mourning Ann Bell, from which shooting, in manner and form aforesaid, the said Mourning Ann Bell then and there instantly died.

So the jurors aforesaid, upon their oath aforesaid, do say that the said Pryor Coleman, in shooting and killing the said Mourning Ann Bell in manner and form aforesaid, was then and there guilty of murder in the first degree, contrary to the statute and against the peace dignity of the State.

J. C. J. WILLIAMS,
District Attorney.

(Endorsed as follows:) No. 1769. Indictment. The State vs. Pryor Coleman. Murder. J. C. S. Bell, prosecutor; Philip D. Bell and Martha Maria Buckley, witnesses for the State, sworn in open court and sent before the grand jury October 2nd, 1874. G. L. Maloney, cl'k. A true bill. W. A. A. Conner, foreman of the grand jury.

Capias.

STATE OF TENNESSEE:

To the sheriff of Knox County, greeting:

You are hereby commanded to take the body of Pryor Coleman and have him instantly before the judge of our criminal court, now sitting

for the county of Knox, at the court-house in Knoxville, to an-
6 swer a charge of the State exhibited against him by indictment for murder; and have you then and there this writ.

Witness G. L. Moloney, cl'k of our said court, at office in Knoxville, the fourth Monday of September, 1874.

G. L. MALONEY, *Clerk.*

(Endorsed as follows:) No. 1769. Instanter capias. The State vs. Pryor Coleman. Issued the 2 day of October, 1874. G. L. Maloney, cl'k.

Came to hand same day issued, executed as commanded, by arresting the party mentioned.

M. D. SWAN, *Sheriff.*

MONDAY, *October* 12*th*, 1874.

Court met pursuant to adjournment. Present and presiding, the Hon. M. L. Hall, judge, &c.

THE STATE
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney, who prosecutes for the State, and the defendant is brought to the bar in custody of the sheriff, having counsel present, when this cause was continued until the next term of this court, as on affidavit of the defendant. Whereupon the defendant was remanded to jail.

FRIDAY, *January* 29*th*, 1875.

7 Court met pursuant to adjournment. Present and presiding, the Hon. M. L. Hall, judge, &c.

Assigning counsel.

THE STATE
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney, who prosecutes for the State, and the defendant is brought to the bar in custody of the sheriff, and he having no counsel, and being unable to employ any, L. C. Houk and C. H. Flournoy were assigned by the court as counsel for the defendant.

SATURDAY, *January* 30*th*, 1875.

Court met pursuant to adjournment. Present and presiding, the hon. M. L. Hall, judge, &c.

Continuance.

THE STATE
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney, who prosecutes for the State, and the defendant is brought to the bar in custody of the sheriff, having counsel present, when this cause was continued until the next term of this court, as on affidavit of the defendant.

Thereupon the defendant was remanded to jail.

WEDNESDAY, *May 26th*, 1875.

Court met pursuant to adjournment. Present and presiding,
8 the Hon. M. L. Hall, judge, &c., when the following proceedings were had and entered of record, to wit:

THE STATE
vs. } No. 1769. Murder.
PRYOR COLEMAN.

Came the district attorney, who prosecutes for the State, and the defendant is brought to the bar in custody of the sheriff, when this cause was passed until Monday next, by consent.

Plea of not guilty and autrefois convict.

THE STATE
vs. } Murder.
PRYOR COLEMAN.

And the said defendant, Pryor Coleman, comes in his own proper person, and for plea to the said indictment says he is not guilty in manner and form therein alleged, and of this he puts himself upon the country.

And the said defendant, Pryor Coleman, comes in his own proper person, and for further plea in this behalf says the State ought not to further have or maintain the aforesaid indictment against him, because he says that heretofore, to wit, on or about the 24th day of March, 1865, the United States, then having and occupying East Tennessee as a military district of the United States, under and by authority of the Constitution and laws of the United States, in which military district
9 Knox County was then included, in and at the time the said murder, in the said indictment mentioned, was and is now alleged to have been committed.

And the said United States so holding and occupying the district of East Tennessee, as aforesaid, and having its armies and military command in the occupation and military control of said military district in which said Knox County was included as aforesaid, at the time of the said alleged murder charged in said indictment, and the said defendant being then and at said time an enlisted man, and regular soldier in the military service of the United States, attached to, regularly mustered in, and occupying the position of corporal in Company G, 1st Tennessee Volunteer Cavalry, owing service to, and actually rendering said service in, the said military command in the said military district as aforesaid, and being subject to the articles of war, military orders, and such military laws as was then in force by authority of the United States in the said military district, he, the said defendant, was then and there, by virtue of the said authority, arraigned before a general
10 court-martial convened at Knoxville, Tennessee, on the 27th day of March, 1865, by General Order No. 66, and dated at Knoxville, headquarters of said military district, on the said 24th day of March, 1865; and the said defendant having been arraigned as aforesaid, before the said general court-martial, and then and there charged and tried before said tribunal, upon charges and specifications setting forth, defining, and charging him with the identical same acts of killing, &c., and with the identical same murder of the identical same person, constituting and being the identical same offense with which the said defendant is charged in the aforesaid indictment; the said general court-

martial having adjourned from time to time, according to law, until on or about the 9th day of May, 1865, when at or about that time the said defendant, being arraigned, charged, and tried, as aforesaid, was by the said general court-martial convicted of the crime of murder, and sentenced by said court to suffer the penalty of death by hanging; and the said defendant avers that the said murder of and for which he
11 was so arraigned, charged, tried, and convicted, as aforesaid, was the same identical offense, and the same acts and deeds of the said defendant that are no' charged against him in the said indictment, on the same identical acts and deeds, and the same murder for which he was arraigned, charged, tried, convicted, &c., as aforesaid.

And the said defendant having been so arraigned and charged as aforesaid, and having pleaded to the said military proceedings as and according to his rights in the premises, and having been tried and convicted as aforesaid, under and according to law, &c., he comes now and avers that the said finding and sentence of said general court-martial—that is to say, the said general court-martial having full jurisdiction of said offense, and having tried him as aforesaid and found him guilty of murder as aforesaid, and sentenced him to suffer death by hanging, as aforesaid, is still standing as the judgment of said general court-martial, approved as required by law in such cases, without any other or further action thereon; and this the said defendant is ready to verify.

Whereupon, in consideration of the premises, and by reason of
12 the said trial, conviction, &c., and the jeopardy heretofore involved in the said proceedings, the said defendant prays judgment, &c., and that the said indictment may be quashed, &c.

PRIOR N. COLEMAN.

Sworn to and subscribed before me this May 31st, 1875.

G. L. MALONEY, *Clerk.*

Prior N. Coleman comes and makes oath that the foregoing plea is true in substance and fact.

PRIOR N. COLEMAN.

Subscribed and sworn to before me this May 31, 1875.

G. L. MALONEY, *Clerk.*

(Endorsed as follows:) Pleas. The State vs. Pryor Coleman. Filed May 31, 1875. G. L. Maloney, clerk.

WEDNESDAY, *June 2nd*, 1875.

Court met pursuant to adjournment; present and presiding, the Hon. M. L. Hall, judge, &c.; when the following proceedings were had and entered of record, to wit:

Continuance.

THE STATE *vs.* PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney, who prosecutes for the State, and the
13 defendant is brought to the bar in custody of the sheriff, having counsel present, when this cause was continued until the next term of this court, as on affidavit of the State.

Thereupon the defendant was remanded to jail.

MONDAY, *September* 6, 1875.

Court met pursuant to adjournment. Present and presiding, the Hon. M. L. Hall, judge, &c.

THE STATE
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney who prosecutes for the State, when this cause was passed until Monday next.

Demurrer.

THE STATE OF TENNESSEE
vs.
PRYOR COLEMAN.

And now comes J. C. J. Williams, district-attorney, who prosecutes for the State in this behalf, and saith that the plea of the said Pryor Coleman, by him therein pleaded, and the matters therein contained, in manner and form as the same are therein pleaded and set forth, are not sufficient in law to bar or preclude the said State from prosecuting
14 the said indictment against the said Pryor Coleman; and that the said State is not bound by the law of the land to answer the same; and this the said district-attorney, who prosecutes as aforesaid, is ready to verify.

Wherefore, for want of a sufficient plea in this behalf, the said district-attorney, for the said State, prays judgment, and that the said Pryor Coleman may be convicted of the premises charged upon him in and by said indictment.

J. C. J. WILLIAMS,
Dist. Atto.

Endorsed as follows: "State vs. Pryor Coleman, demurrer to def'ts plea in bar. Filed 6th September, 1875. G. L. Maloney, clerk."

FRIDAY, *September 24th*, 1875.

Court met pursuant to adjournment. Present and presiding, the Hon. M. L. Hall, judge, &c., when the following proceedings were had and entered of record, to wit:

Judgment of the court upon the plea and demurrer.

THE STATE,
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney who prosecutes for the State and comes also the defendant to the bar in custody of the sheriff, and there-
14 upon this cause came on for hearing, upon the plea of autre fois convict heretofore filed by def't. The demurrer thereto filed and arguments of counsel, and the matter being fully understood, the court doth consider that the demurrer aforesaid is in the nature of a motion to strike said plea from the files, and being further of the opinion that said plea is defective—because, first, it does not convey a reasonable

certainty of meaning; and secondly, because it does not show a substantial cause of defence.

It is therefore ordered by the court that defendant file a more specific plea showing a more substantial cause of defence, else the said plea will be stricken from the files.

And thereupon the defendant by counsel asked leave an amended and an additional plea, which was accordingly granted, said plea filed, and because this order having been made and was not entered on the 20th day of September, 1875, it is entered now for them.

Amended plea.

THE STATE OF TENNESSEE *vs.* PRIOR N. COLEMAN. } Murder.

And now comes the defendant in his own proper person, and
16 in addition to the former pleas pleaded by him, in the afore-mentioned cause, and filed in said cause on the 31st day of May, 1875, by direction of the court files this amended and additional plea to said indictment No. 1769, and says the State of Tennessee ought not to have and maintain its aforesaid action against him, no' ought he be put upon his trial therefor, because he says, that he has heretofore, to wit, on the 9th day of May, 1865, before a regularly constituted tribunal convened and held under the then laws of the land, he, this defendant was tried for his said offence.

That said court was a general court-martial, convened by special order No. 66, from the headquarters District of East Tennessee, Knoxville, Tenn., dated March 24th, 1865, said District of East Tennessee being there and then under command of Major General Stoneman, and said special order having been issued by his, the said Stoneman's direction and authority under the constitution and laws of the land to
17 issue said special order and convene said general court-martial for the trial of this defendant who was then a soldier in the U. S. Army and under the command of the said Stoneman, major general.

That said special order No. 66, as aforesaid, by its terms convened said court at Knoxville, Tenn., on the 27th day of March, 1865, with the following detail of officers composing and constituting said court, to wit:

Col. R. W. Ratliff, 12th Ohio Vol. Cavalry.
Capt. A. F. McMillan, 1st U. S. Col'd Artillery.
Capt. D. C. Dossett, 9th Tenn. Vol. Cavalry.
1st L't J. B. Milles, 13 Tenn. Vol. Cavalry.
1st Lieut. A. R. Rogers, 2nd Ohio Vol. H'y Art'y.
1st " H. C. Holt, 2nd " " " "
1st " Sam'l Taylor, 1st " " " "
1st " Ja's A. Hedges, 2nd " " " "
1st L't S. W. Schearman, 1st U. S. Col'd Art'y (h'y).
2nd L't L. H. Fowler, 22nd Ohio Bat'y Vol. L't Art'y.
2nd L't Martin Redkey, 2nd " Vol. Heavy "
2nd L't S. H. Jordan, 1st U. S. Col'd Art'y (h'y).
2nd L't D. C. Howard, 1st Ohio H'y Art'y.
Capt. E. J. Brooks, 10 Mich. Cav'y, judge advocate.

18 That on the 31st day of March, 1865, at Knoxville, Tenn., said Knoxville and Knox County being still in the hands and under the control of the military authority of the U. S. Gov't, and this de-

fendant being then a soldier in said U. S. Army, and under the control of said military authority, and said military then as before having full jurisdiction to try and inquire into his said offence, there was issued from the headquarters of said Major-General Stoneman, and by his authority and directions, special order No. 73, which, by and in paragraph I of said order No. 73, relieved from duty on said general court-martial, hereinbefore alluded to and mentioned as convened, in and by special order No. 66, the following-named officers: 1st L't J. B. Milles, 13th Tenn. Vol. Cav'y; 2nd L't S. H. Jordan, 1st U. S. Col'd Art'y (heavy); 2nd L't D. C. Howard, 1st Ohio Vol. H'y Art'y; and by paragraph II of said order No. 73, as aforesaid, assigned to duty on said general court-martial, the following-named officers: Capt. W. H. Jordan, 11th Mich. Vol. Cavalry; 1st L't Geo. H. Douglass, 8th Tenn. Vol. Inf't'y; 1st L't John L. Morris, 1st U. S. Col'd Artil'ery.

19 And afterwards, to wit on the 19th day of April, 1865, at, to wit, Knoxville, Tenn., there was issued from the headquarters District of East Tenn., the said Knoxville and Knox County being then command of Major-General Stoneman, and said Stoneman, as major-general U. S. Army, and this defendant, a soldier in said U. S. Army, having full power and authority to issue said order, and convene or alter detail for said general court, did issue or cause to issue special order No. 89, from said headquarters Dist. of East Tenn., relieving from duty on said court-martial the following officers: Capt. A. F. McMillan, 1st U. S. Col'd Art'y (h'y); 2nd L't Martin Redkey, 2nd Ohio Vol. H'y Art'y; when, on the 9th of May, 1865, at 9 o'clock a. m., said general court-martial, convened as aforesaid, and said court, consisting of the following-named officers, met and were present at Knoxville, in Knox County, on said 9th May, 1865, and composed and constituted said court, to wit:

1. Col. R. W. Ratliff, 12th Ohio Vol. Cav'y.
2. Capt. D. C. Dossett, 9th Tenn. Vol. Cav'y.
3. Capt. W. H. Jordan, 11th Mich. Vol. Cav'y.

20 4th. 1st L't A. R. Rodgers, 2nd Ohio H'y Art'y Vol.

5. 1st L't H. C. Holt, 2nd Ohio H'y Art'y Vol.
6. 1st L't Sam'l Taylor, 1st H'y Art'y Vol.
7. 1st L't James A. Hedges, 2nd " " "
8. 1st L't L. W. Scheaman, 1st U. S. Col'd H'y Art'y.
9. 1st L't George W. Douglass, 8 Tenn. Vol. Inf't'y.
10. 1st L't John L. Morris, 1st U. S. Col'd Art'y (H'y).

11th. Capt. E. J. Brooks, 10th Mich. Cav'y, judge-advocate.

12. 2nd L't S. N. Fowler, 22nd Ohio Bat'ery, Vol. L't Art'y.

That there, to wit, on said 9th day of May, 1865, said court being regularly constituted and approved, and having jurisdiction to try this defendant for his said offence, which said offense is and was the same identical offense of and for which he was stand charged, did, after each and every member of said court had been sworn by the judge-advocate, except 2 L't S. H. Fowler, who was absent and did not participate in the deliberations of said court, and after the said judge-advocate had been by the president of said court, the oaths all being administered in the presence of this defendant, this defendant was then

21 and there, at, to wit, Knoxville, Tenn., in Knox County, Tenn., on the said 9th day of March, 1865, duly and regularly arraigned on charges and specifications, among which was the following:

CHARGE IIII.

Murder.

Specification.—In this, that the said Pryor Coleman, corporal Company G, 1st Tenn. Cavalry Vol., at about the hour of ten o'clock p. m., on or about the (7) seventh day of February, eighteen hundred and sixty-five, at the residence of Phillip D. Bell, citizen of the county of Knox, State of Tennessee, did wilfully and feloniously kill and murder Mornan A. Bell, daughter of the said Phillip D. Bell, by shooting her, Mornan A. Bell as aforesaid, through the head, with a pistol, held in the hand of the said Pryor Coleman.

To which charge IIII and specification IIII this defendant did then and there plead not guilty.

Thereupon the said court, organized and appointed as aforesaid, setting in judgment and trial as aforesaid, having full and complete jurisdiction to try this defendant for his said offence, did proceed to
22 hear the evidence in the cause, upon, of, and concerning said charge IIII and specification IIII, which said charge and specification embodies, constitutes, and comprises the same identical offence now charged against this defendant, and embodied in said indictment No. 1769, and not a separate and different offence, and which said court, so constituted and organized as aforesaid, did, after hearing the whole testimony then adduced, did, after having said court cleared for deliberation, did, after consideration of and deliberation upon said evidence so adduced, adjudge this defendant of said charge IIII and specification IIII guilty; and the said court did thereupon sentence this defendant as in such case made and provided.

That said sentence and proceedings of said court were duly signed by Col. R. W. Ratliff, president of said court, and Judge-Advocate E. J. Brooks, and made matter of record.

That said proceedings of said court were duly and regularly on the 27th day of May, 1865, at, to wit, Knoxville, Tenn., in the
23 county of Knox, from headquarters district of E. Tenn., by George Stoneman, Major-Gen'l U. S. Vol., com'd'g dist. of E. Tenn., approved and respectfully forwarded to headquarters Department of the Cumberland, and on the 14 June, 1865, at, to wit, Nashville, Tenn., headquarters Department of the Cumberland, George A. Thomas, Major-General U. S. A., commanding said Department of the Cumberland, did approve and confirm the sentence of said court, and order same carried into execution at Knoxville, Tenn., on Friday, 21st July, 1865, between the hours of 8 a. m. and 6 p. m.

And this defendant doth further aver and say that he is the same identical Pryor Coleman mentioned and alluded to in charge IIII, specification IIII, and also in indictment No. 1769; that the persons are the same, and the offenses are the same, and not different and separate.

And this defendant here says, as before he has said, that the offense which he now stands charged by indictment No. 1769 is the same
24 identical offense of and for which he was tried on the 9th May, 1865, and of and for which he was charged in charge IIII, specification IIII, alluded to herein, and not another and different offense.

Wherefore he prays judgment if he should be held and required to answer the State of Tennessee of the offense charged in said indictment No. 1769, but that the said indictment No. 1769 may be quashed.

FLOURNOY,
Att'y for Def't.

STATE OF TENNESSEE,
Knox County:

Personally appeared Pryor N. Coleman, the foregoing def't, and mad' oath that the for'going plea is true in substance and in fact.

PRIOR N. COLEMAN.

Subscribed & sworn to before me this 20th day of Sept., 1875.

G. L. MALONEY, *Clerk.*

(Endorsed as follows:) "No. 1769. The State vs. Pryor N. Coleman. (Amendment to plea filed 31st May, 1875, by direction of the court.) Filed Sept. 20th, 1875. G. L. Maloney, clerk."

Demurrer to amended plea.

THE STATE
vs.
PRYOR COLEMAN. } Murder. Demurrer.

Came the district attorney, who prosecutes for the State in this
25 behalf, and doth demur to the plea of autrefois convict, and the amended plea thereto filed, and for cause of demurrer doth assign—

First. Said plea and amendment does not allege that the judgment of said court-martial is still in force and effect.

Second. The said plea and amended plea does not allege that at the time of trial and conviction the said defendant was subject to the articles of war.

Third. The plea and amended plea does not allege, at the time of commission of the offence of which the defendant is charged, that it was during and in time of war, insurrection, and rebellion.

Fourth. Even if defendant was tried and convicted of the offence of which he is now charged by a duly and regularly organized court-martial, under the laws of the United States, on the 9th of May, 1865, yet this is no bar to the indictment now charging him with the identical offence of murder of which he has been co'victed by said court-martial, because in and by said murder he was also guilty of an offense against the laws of Tennessee.

26 Whereupon the district attorney doth demur, and prays the judgment of the court on said plea and amendment thereto filed.

WILLIAMS, *Dist. Att'y.*

(Endorsed as follows:) "The State vs. Pryor Coleman. Murder. Demurrer, &c. Filed September 25th, 1875. G. L. Moloney, clerk."

TUESDAY, *September 28th*, 1875.

Court met pursuant to adjournment. Present and presiding, the Hon. M. L. Hall, judge, &c., when the following proceedings were had:

Amendment to the amended plea.

THE STATE
vs.
PRYOR COLEMAN. }

The demurrer heretofore filed in this cause having come on for argument, and before the same is decided by the court, now comes the de-

fendant, Pryor N. Coleman, in his own proper person, and, on leave of the court first had and obtained, says the facts, statements, and circumstances in his original and amended pleas pleaded and filed in the foregoing cause, were each and severally and all committed and held and tried by said general court-martial during time of civil war, insurrection, and rebellion, and the offence which he now stands charged by said
27 indictment No. 1769, and of, for, and concerning which he was tried and convicted, as in said original and amended pleas detailed, and, as detailed, were each and all committed, transpired, held, and occurred, at the time occurred, and at the place occurred, during times of civil war, insurrection, and rebellion, and when, for, and on account of said civil war, insurrection, and rebellion, the said Knox County being in said military district, and said general court-martial convened, did try this defendant, as alleged in his said pleas, and said general court-martial had full, complete, and competent jurisdiction to try his said offence, he being subject to Articles of War, and soldier in said U. S. Army.

PRYOR N. COLEMAN.

Subscribed and sworn to before me this 28th , 1875.
G. L. MALONEY, *Clk.*

Judgment of the court upon the demurrer to plea & amendments.

THE STATE
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney, who prosecutes for the State, and came also into open court the defendant in his own proper person, and also his counsel; and thereupon this cause came on to be argued
28 before the Hon. M. L. Hall, judge, &c., upon the plea of autrefois convict, and amendments thereto, and the demurrer filed to same, and arguments of counsel being heard, the counsel for defendant moved the court to amend his amended plea so as to allege that the offence of murder, of which he is charged and of which he alleges he has been convicted by military court-martial, was committed of at all during war, insurrection, and rebellion; which was accordingly granted, and thereupon the court proceed to render its decision upon the points made in the demurrer, and doth order that the first and fourth causes assigned in said demurrer be, and the same are, sustained, and the second and third causes assigned in same are overruled and for nothing held.

WEDNESDAY, *Sept. 29th*, 1875.

Court met pursuant to adjournment. Present & presiding, the Hon. M. L. Hall, judge, &c., when the following proceedings were had:

THE STATE
vs.
PRYOR COLEMAN.

29 The defendant comes and makes oath that owing to the absence of Jim Parker and Sam Cox, witnesses material for his defence, he is unable to go to trial at the present term. These witnesses have been subpœnaed to attend, but are not in attendance. They are not absent by his procurement or consent, and he will use every endeavor

to have them at the next term. He expects to prove by said witnesses that at the time said murder was committed, if any committed, he, this defendant, was not present, nor in any way connected therein, but that the offence, if any committed, was committed by another and different party than this defendant, and the party committing said offence, if any committed, confessed the same to said witnesses.

Affiant further swears that owing to absence of his counsel, Judge Houk, he is unprepared for trial. He hopes to be able to have his said witnesses, as also his counsel, at the next term of this court. He does not make this application for delay, but that justice may be done.

PRIOR N. COLEMAN.

Subscribed and sworn to before me this 29th Sept., 1875.

G. L. MALONEY, *Clk.*

30 Endorsed as follows: "No. 1769. The State vs. Prior N. Coleman. Filed 29th Sept., 1875. G. L. Maloney, cl'k."

THE STATE
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney, who prosecutes for the State, and the defendant is brought to the bar in custody of the sheriff, and L. C. Houk, one of the attorney' heretofore assigned by the court for the defence in this case being absent, W'm Fitzgerald, esq'r, was assigned as assistant counsel for the defendant, who, upon hearing the indictment read, pleads not guilty to the same, and for his trial puts himself upon the country, and the district attorney doth the like; and thereupon to try the issue joined between the State of Tennessee and this defendant, were summoned, tried, and elected the following jurors, to wit, A. H. Hodge, Solomon De Vault, E. Weatherford, Matt. Woods, Z. P. Burnett, P. D. Rhoady, Wash Morrow, and R. N. Leay, all good and lawful citizens of Knox County, who were placed in charge of J. W. Fox, a deputy sheriff of Knox County, sworn to keep them together,
31 separate and apart from other citizens, and not allow them to have any communication with other citizens, nor converse with them himself upon the subject of this trial, until he shall return with them in open court, at the meeting thereof on to-morrow morning.

THURSDAY, *September 30th*, 1875.

Court met pursuant to adjournment. Present and presiding the Hon. M. L. Hall, judge, &c., when the following proceedings were had and entered of record, to wit:

THE STATE
vs.
PRYOR COLEMAN. } No. 1769. Murder.

Came the district attorney, who prosecutes for the State, and the defendant is brought to the bar in custody of the sheriff, having counsel present, and there was also in open court, in charge Deputy-Sheriff J. W. Fox, the following jurors, eight in number, to wit, A. H. Hodge, Solomon De Vault, E. Weatherford, Matt Woods, Z. P. Burnett, P. D. Rhoady, Wash Morrow, and R. H. Leay, the same that were elected on

yesterday, and thereupon the court proceeded to the further em-
32 panneling of the jury, when the following additional jurors were elected, to wit, Alex. Gardner, W. W. Cruze, Sam'l H. Davis, and W. C. Slatery, who, together with the eight, to wit, A. H. Hodge, Solomon De Vault, E. Weatherford, Matt Woods, Z. P. Burnett, P. D. Rhoady, Wash Morrow, and R. H. Leay, elected on yesterday, who, together with the said jurors elected on yester , having been summoned, tried, elected, and sworn to try the issue joined between the State of Tennessee and this defendant from rendering a verdict were respited until to-morrow morning, and by consent of the defendant and district attorney were placed in charge of J. W. Fox, a deputy sheriff of Knox County, sworn to keep them together, separate and apart from other citizens, and not allow them to have any communication with other citizens, nor converse with them himself upon the subject of this trial until he shall return with them into open court at the meeting thereof on to-morrow morning.

FRIDAY, *October 1st*, 1875.

33 Court met pursuant to adjournment. Present and presiding, the Hon. M. L. Hall, judge, &c., when the following proceedings were had and entered of record, to wit:

THE STATE
vs. } No. 1769. Murder.
PRYOR COLEMAN.

Came the district attorney, who prosecutes for the State, and the defendant is brought to the bar in custody of the sheriff, having counsel present, and also came the jury heretofore sworn in this cause, to wit, A. H. Hodge, Solomon De Vault, E. Weatherford, Matt. Wood, Z. P. Burnett, P. D. Rhoady, Wash. Morrow, R. H. Leay, Alex. Gardner, W. W. Cruze, Samuel H. Davis, and W. C. Slatery, who, having returned into court to resume the consideration of this cause, upon their oath do say that the defendant is guilty of murder in the 1st degree as charged in the indictment without mitigating circumstances.

Thereupon the defendant, by counsel, enters a motion for a new trial in this cause.

THE STATE
vs. } No. 1769. Murder.
PRYOR COLEMAN.

This day came the district attorney, who prosecutes for the
34 State, and the defendant being brought to the bar of the court, in proper person, having counsel present, and thereupon came on for hearing the defendant's motion for a new trial, which motion having been argued by counsel and considered of and well understood by the court, it is ordered by the court that the motion be overruled and a new trial refused, and it being demanded of the defendant if he has anything further to say why the sentence of the law should not be pronounced upon him, says he has nothing further to say than he hath already said.

It is therefore considered by the court that for his offence the defendant, Pryor Coleman, be taken by the sheriff of Knox County, to the jail of Knox County, and that he be safely confined therein until Friday, the 19th day of November, 1875, and that on the said 19th day of November, 1875, the said defendant, Pryor Coleman, to be taken to some place of

public execution within one mile of the corporate limits of the city of Knoxville, Tenn., in Knox County, in said State of Tennessee,
35 and that between the hours of 10 o'clock a. m. and 3 p. m. of the said 19th day of November, 1875, he be then and there hung by the neck until he be dead. And it is ordered by the court that the sheriff of Knox County execute this judgment.

And it is further considered by the court that the defendant pay all the costs of this prosecution for which execution may issue.

Thereupon the defendant prays an appeal from the judgment aforesaid, in the nature of a writ of error to the next term of the supreme court of Tennessee, to be holden at Knoxville.

SATURDAY, *October 2nd*, 1875.

Court met pursuant to adjournment. Present and presiding, the Hon. M. L. Hall, judge, &c, when the following proceedings were had and entered of record, to wit:

THE STATE
vs. } No. 1769. Murder.
PRYOR COLEMAN.

Came the district attorney, who prosecutes for the State, and the defendant having prayed an appeal to the next term of the Supreme Court comes and by his attorney, tenders his bill of exceptions, which
36 is signed and sealed by the court, and ordered to be made a part of this record in this case.

Thereupon said appeal is granted, and the defendant remanded to jail.

Bill of exceptions.

In criminal court, district of Knox County, Knoxville, Tenn.

THE STATE
vs. } Murder.
PRYOR COLEMAN.

In the trial of this cause the following evidence was submitted to the jury:

1st witness, J. C. S. BELL, sworn.

He was the prosecutor, and the deceased Mourning Ann Bell was his sister, died 7th March, 1865, at the house of her father, Phillip D. Bell, in Knox County. I saw her after she had been shot. The bullet went in, from appearance, about the nose of the face and came out at the back of the head.

2nd witness, RUFUS CHAMLESS, being duly sworn, says:

I did not know Phillip D. Bell in the year 1865, I lived 5½ miles from Bell's at that time. The defendant came home with my brother before the death of deceased, he, defendant, came to our house with
27 my brother James Chamless, and were there some time; cannot say how long, but more than a day. The next morning after the killing saw def. and my brother at our house; they came little after daylight. Brother did not stay long. Coleman, the defendant, staid at our house until they arrested him. Brother did not stay but a few m in-

utes. Saw brother night he was killed. A week or so after. I saw def't and brother at still-house the evening of the night of the killing. Still-house about 4 miles from Bell's. Mother sent me after brother Jim, to tell him to come home; he said he would; then he would not. They, my brother and Coleman and M'r Parker, left the still-house together. They left about dark. They were drinking when they left and while there at the still-house.

Cross-examination:

They, my brother and defendant, were around in the neighborhood near a week before the killing. They left the still-house after dark and had a canteen, drinking out of it. I would not call them drunk.

JAMES PARKER, next witness, being sworn, says:

38 Saw defendant for the first time at Sam. Cox still-house, in Knox County, night of killing. Staid at still-house 3 or 4 hours. I was there when they came, Coleman and Chamless. Coleman had a pistol, don't know whether Chamless did or not. When they left still-house I went with them, or they with me, to about one mile of my house. I went home and they came in direction of Knoxville. When I left them it was about one mile to Phillip D. Bell's. I parted from them near O'dells mills, about 8 or 9 o'clock at night.

Cross-examination:

I think there was something said about their coming to Knoxville to get marriage license for Chamless. They were under the influence of liquor when I left them. Don't know that they were drunk. I think there was something said about waiting until next day, but what it was I don't remember. They said they wanted to go to Gus. Piller's—but neither Piller's house nor P. D. Bell's was on the road to Knoxville. I left them in the road about 8 or 9 o'clock.

W. R. LANNING, next witness, being duly sworn, says:

39 I live ¾ mile from Phillip D. Bell. Saw Coleman next day after the killing at Jelts; he was then arrested. Demarcus said in prisoner's presence, "Here's blood on his pistol." (Excepted to by def't.) The pistol was blood spattered on the under side. I heard Phillip D. Bell's testimony on the preliminary examination of the defendant before the justice of the peace on this charge of the defendant. I think I can state the substance of what he testified to on oath, on that occasion. Phillip D. Bell is dead.

(Defendant, by his counsel, excepted to this testimony as to what Phillip D. Bell swore. Overruled and allowed to go to the jury.)

PHILLIP D. BELL swore:

They, defendant and Chamless, came to the house the night of the killing and knocked at the door, and wanted to stay all night. He (Bell) told the deceased, his daughter, to open the door and let them in. They were in but a few minutes when they told him they wanted $500.00. Coleman knocked him down with a pistol; after he struck him again with a pistol he knew no more till he came to and found his daughter dead. He knew defendant to be the man.

Cross-examination:

40 I think there was something said by M'r Bell, in his testimony, about his having hold of a chair, and didn't know whether he intended to strike with it or not.

public execution within one mile of the corporate limits of the city of Knoxville, Tenn., in Knox County, in said State of Tennessee,
35 and that between the hours of 10 o'clock a. m. and 3 p. m. of the said 19th day of November, 1875, he be then and there hung by the neck until he be dead. And it is ordered by the court that the sheriff of Knox County execute this judgment.

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2nd witness, RUFUS CHAMLESS, being duly sworn, says:

I did not know Phillip D. Bell in the year 1865, I lived 5½ miles from Bell's at that time. The defendant came home with my brother before the death of deceased, he, defendant, came to our house with
27 my brother James Chamless, and were there some time; cannot say how long, but more than a day. The next morning after the killing saw def. and my brother at our house; they came little after daylight. Brother did not stay long. Coleman, the defendant, staid at our house until they arrested him. Brother did not stay but a few m in-

utes. Saw brother night he was killed. A week or so after. I saw def't and brother at still-house the evening of the night of the killing. Still-house about 4 miles from Bell's. Mother sent me after brother Jim, to tell him to come home; he said he would; then he would not. They, my brother and Coleman and M'r Parker, left the still-house together. They left about dark. They were drinking when they left and while there at the still-house.

Cross-examination:

They, my brother and defendant, were around in the neighborhood near a week before the killing. They left the still-house after dark and had a canteen, drinking out of it. I would not call them drunk.

JAMES PARKER, next witness, being sworn, says:

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Cross-examination:

I think there was something said about their coming to Knoxville to get marriage license for Chamless. They were under the influence of liquor when I left them. Don't know that they were drunk. I think there was something said about waiting until next day, but what it was I don't remember. They said they wanted to go to Gus. Piller's—but neither Piller's house nor P. D. Bell's was on the road to Knoxville. I left them in the road about 8 or 9 o'clock.

W. R. LANNING, next witness, being duly sworn, says:

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39 the killing at Jelts; he was then arrested. Demarcus said in prisoner's presence, "Here's blood on his pistol." (Excepted to by def't.) The pistol was blood spattered on the under side. I heard Phillip D. Bell's testimony on the preliminary examination of the defendant before the justice of the peace on this charge of the defendant. I think I can state the substance of what he testified to on oath, on that occasion. Phillip D. Bell is dead.

(Defendant, by his counsel, excepted to this testimony as to what Phillip D. Bell swore. Overruled and allowed to go to the jury.)

PHILLIP D. BELL swore:

They, defendant and Chamless, came to the house the night of the killing and knocked at the door, and wanted to stay all night. He (Bell) told the deceased, his daughter, to open the door and let them in. They were in but a few minutes when they told him they wanted $300.00. Coleman knocked him down with a pistol; after he struck him again with a pistol he knew no more till he came to and found his daughter dead. He knew defendant to be the man.

Cross-examination:

40 I think there was something said by M'r Bell, in his testimony, about his having hold of a chair, and didn't know whether he intended to strike with it or not.

MARTHA BUCKLEY, next witness, being duly sworn, deposed and said:

I am the daughter of Phillip D. Bell. I recognize the defendant as one of the men who came to my father's house, in Knox County, on the night of the 7th March, 1865; a man by the name of Chamless came with him. I was living at my father's house at the time. It was between 9 and 10 o'clock at night when they came. My sister, the deceased, let them in after having been told to do so by my father. When they came in Coleman told Chamless to close the door and stand there. Chamless did so, and stood with his back against it. Coleman walked over to wher' pappy was and wanted $500 in hard money. Pappy said he did not have it. He usually kept money about the house, but at that time he did not have any. Coleman said, "If you don't give me the $500 I will kill you." Coleman knocked pappy down, and my sister, the deceased, jumped in between and endeavored to prevent the
41 blows. Coleman continued to strike over her shoulders and head at pappy, and Coleman snapped a cap. I ran to the man who was standing against the door, seeing he was leveling his pistol at pappy, and threw his arm up, and scuffled with him. They both got to shooting. Chamless got loose from me, and at one time got over by the mantle-piece, but I followed him up trying to keep him from shooting. At one time, after my father was knocked down, he commenced to get up, but Coleman hit him over the head with his pistol, and father fell back quiet. I ran to the door and hollowed, and when I came back I found my sister, the deceased, on the floor dead, and pappy also on the floor bleeding and apparently dead. I could not say who did the firing that killed sister—both were armed—and could not say who did it. My sister was shot in the face. I throwed the door open and commenced to hollow, and ran out in the yard, screaming; they both followed me and called me to halt. I did not do so at first, but did on second call. They came up with me, and I think Coleman said, if I didn't go
42 back and stop that hollowing he would kill me. I said I would go back, but could not stop hollowing. Father was all bloody. Coleman hit him with his pistol, saying, "I reckon you will give it up now." Mother told me to get what money there was and give it to them. I went to the bureau drawer and got what there was, two or three dollars I think, and gave it to the man Chamless. They said they had 2 loads left, and they were going over to kill my brother. I told them my brother had no money—I knew it—and not to go. They then left. They said they would burn the house, and pulled chunks of fire out in the floor, but it didn't burn.

Cross-examination:

Seem' to me pappy did have hold of a chair, but whether he intended to strike with it I do not know. He did not have hold of anything at first. There was nobody at the house but my father, over sixty years of age, my mother, who remained in bed and is a cripple, my youngest sister, who was killed, another sister, up stairs, and myself.

W'M DEMARCUS, next witness, being duly sworn, deposed and said:

43 I live one mile from Phillip D. Bell. I saw defendant next day after the killing at night. I was one of the crowd that arrested him. He had no weapons. We arrested him at the house of Chamless. He said, after we had him under arrest, "Boys, none of you have my pistol, have you?" We went back in the house and got his pistol, which he recognized as his. There was blood spattered on the under side of the barrel, just beyond the cylinder. We were examining the blood and

def't made strange about it—like spatters of blood on the pistol in front of the cylinder on under side. Defendant said when they, he and Chamless, started that night they stopped in at Mr. P. D. Bell's; he, defendant, didn't know what was to be done, and he did all he could to prevent Chamless from doing it.

Cross-examination:

Coleman, the defendant, was a stranger in the neighborhood. Chamless lived there. Chamless was killed in the attempt to arrest him for the offence.

WASH. GENTLE, next witness, being duly sworn, says:

43 He was in prison, the jail of Knox County, when the defendant was put in. Bill Bunker asked him, defendant, what he was put in there for. Defendant said he was charged with being concerned in the killing of Miss Bell, and Bunker said, "are you the man?" and the defendant said "I am."

This was all the testimony, the defendant having no witnesses.

The defendant excepted to the original panel being less than should have been submitted under the law, he claiming 35 challenges, the court allowing him only 24 under recent statute.

Defendant excepted to submission to him of jurors who had formed opinion on rumor alone, but on examination by the court the juror stated that he could divest his mind from any impression on it from rumor, and do exact and impartial justice, relying alone upon the evidence. The court declared said juror competent, and thus compelled to exhaust one of his challenges on said juror, M'r Adney by name.

The court charged the jury as follows:

THE STATE
vs.
PRYOR COLEMAN.

GENTLEMEN OF THE JURY: The defendant, Pryor Coleman,
45 whom you have in charge, and between whom and the State you have sworn to render a true verdict according to the law and the testimony, stands charged with the murder in the first degree Mournan A. Bell. To this charge the defendant has pleaded not guilty, and for trial has put himself upon the country, and the district attorney for the State has done likewise. You, gent'emen, are the country, and it is your duty, under the oath you have taken, to try this issue. Homicide, or man killing, is divided by our law into murder and manslaughter. Murder is divided into two degrees, and there are two grades of manslaughter.

Under the indictment in this case you may (if the proof warrant it) find the defendant guilty of murder in the first degree, or murder in the second degree, or voluntary or involuntary manslaughter, because the lower grades are also contained in the same indictment. This being the case, it becomes the duty of the court to define to you the different offenses contained in said indictment. Murder by our law is defined as follows:

46 "If any person of sound memory and discretion unlawfully kill any reasonable creature in being and under the peace of the State with aforethought, either expressed or implied, such person shall be guilty of murder.

"Every murder perpetrated by means of poison, or lying in wait, or by any other kind of wilful, deliberate, malicious, and premeditated killing, or committed in the perpetration of or attempt to perpetrate any arson, rape, robbery, burglary, or larceny, is murder in the first degree. All other kinds of murder shall be murder in the second degree.

"Manslaughter is the unlawful killing of another without malice, either express or implied, which may be either voluntary upon a sudden heat, or involuntary, but in the commission of some unlawful act."

When the act of killing is not done in the commission of, or attempt to commit, some one of the felonies mentioned in the definition of murder, nor by poison or lying in wait, then, to constitute murder in the first degree, it must appear from the proof that the killing was
47 done wilfully; that is, with the purpose and intent that the act by which the life of the deceased is taken should have that effect. It must also appear to have been done deliberately; that is, with cool purpose. It must have been been done with malice aforethought; that is, with an unlawful motive and wicked intention to do the act.

The evidence must also show that it was done with premeditation, that is, with a deliberate mind and design to kill, formed and existing in the mind previous to the act of killing and accompanying the act of killing.

If this previously formed wicked design accompany the act of killing it is sufficient, and it need not have been deliberated upon for a day or an hour, or for any particular length of time, so that it be previously formed and shall actually accompany the act of killing, for the law knows of no specific time within which an intent to kill must be formed, so as to make the killing murder. If the will accompanies the act a moment antecedent to the act itself which causes death, it is sufficient. To constitute murder in the first degree under the statute,
48 there must exist a specific intention to take the life of the party slain. The killing must be felonious, that is, without excause or justification.

The whole body of the evidence in the case taken together must be such as to satisfy the mind of the jury, to the exclusion of every reasonable doubt, that the ultimate result which the concurring will, deliberation, malicious and unlawful motive, and premeditation of the accused sought was the death of the party slain. All persons present and actually participating in the commission of a crime or aiding or abetting therein are guilty as principals.

In cases of murder by the ordinary means, that is, when not done in the perpetration of, or attempt to perpetrate, some one of the felonies before mentioned, nor by poison, nor by lying in wait, the evidence must show that it was done wilfully, maliciously, deliberately, and with premeditation, or it is not murder in the first degree. If the killing be done with malice aforethought but without premeditation, that is, if
49 the design to kill was not formed and existing in the mind previous to the act of killing, the offence would be murder in the second degree.

Malice is a necessary ingrediant in both degrees of murder. It is either express or implied. Express malice is where one with a deliberate mind and formed design to kill another does the act; implied malice is the dictate of a depraved, wicked, and malignant heart, and not so properly spite or malevolence toward a particular individual; and either kind of malice is sufficient in either degree of murder. Malice essential to constitute the claim of murder is not alone confined to an intention to take away the life of the deceased, but it includes an intent

to do any unlawful act which may probably result in depriving the party of life. When the State establishes the fact of killing without more, malice is presumed and the onus of exculpation is on the prisoner. The law will imply malice from the unauthorized use of a deadly weapon without provocation. But malice is not to be inferred from the deadly intent merely, for that may exist in a case of self-
50 defence or upon a sudden or reasonable provocation. But if the killing be done in the actual attempt to commit any one of the felonies before mentioned in the definition of murder, including robbery, or by poison, or lying in wait, then in such case the law presumes all persons present and aiding and abetting therein are guilty as principals, and no further evidence of malice or premeditation is required.

If there be no malice, and the killing is not excusable or justifiable, as in case of self-defence, then the killing would be manslaughter, either voluntary or involuntary, as if, upon a sudden heat or quarrel, two persons fight and one kill the other, without malice, the offense would be voluntary manslaughter. Involuntary manslaughter is where death ensues from the commission of some unlawful act, or an act not strictly unlawful in itself, but which was done in an unlawful manner, without malice or intention to injure the party slain. If two or more parties start or set out to commit a felony, then all concerned therein are responsible for any or all the acts done by any of the parties in fur-
51 therance of the common object for which they set out; but if any one or more of the parties turn aside from the common purpose or object and commit a different crime outside of the common purpose, then the others would not be guilty of such outside or different crime, unless they participate therein themselves or aid and abet therein; and in such case, then all who actually participated or aided or abetted therein would be guilty as principals.

Every person has a right to interfere to prevent the commission of a felony, and if a person attempting to prevent any of the felonies mentioned in the definition of murder be slain by the person attempting to commit such felony, or by any one aiding and abetting in the commission of or attempt to commit such felony, in such case the slayer and his aiders and abetters would be guilty of murder in the first degree.

If the evidence shows that the defendant in this case was present and endeavored to prevent the death of the deceased, then he would not be guilty. The law presumes every man innocent, and that presumption maintains until the contrary is shown by proof.

52 Gentlemen, you are the sole judges of the proof, and in this character of case may judge of the law. You are also the sole judges of the credibility of the witnesses and the weight to be given to the swearing of each and every witness in the case.

Before you can find the defendant guilty, you must be satisfied from the proof that Moarman A. Bell was killed, that she was killed in the county of Knox, and that she was killed by the defendant himself or by some one acting in concert with him, either with intent to kill her, or that she was killed by defendant or some person acting in concert with him in the commission of or attempt to commit some one of the felonies before mentioned in the definition of murder, or by poison, or lying in wait.

Before you can find the defendant guilty the evidence must be so strong as to exclude every reasonable supposition except that of guilt, and if, after looking at all the proof and circumstances in the case, there should exist in your minds a reasonable and well-founded doubt, a doubt

springing from the fact' and circumstances themselves, such doubt should weigh in favor of the defendant, and you ought to acquit.

53 If after carefully examining and weighing all the proof and circumstances in the case you should be of the opinion that the defendant is guilty of murder, but should have a reasonable and well-founded doubt as to whether he is guilty in the first degree or murder in the second degree, then it would be your duty to find him guilty of murder in the second degree; or if you should be of the opinion that the defendant is not guilty in either first or second degree, but that he is guilty of manslaughter, but should have a reasonable and well-founded doubt as to whether it is voluntary or involuntary manslaughter, then it would be your duty to find him guilty of involuntary manslaughter.

In reviewing the testimony, the jury can look to the interest and feelings of the witnesses, their relationship to any of the parties, their intelligence and respectability, their means of knowledge of the fact about which they testify, their manner of testifying, their readiness and willingness to answer upon the one side and their unwillingness to answer upon the other side (if such be the case), and their having made contradictory statements out of court (if such is the case.)

54 Thus having duly and fairly weighed and considered all the matters, the jury must determine for themselves the weight to be given to the whole body of the evidence and to that of each witness.

If the jury should find the defendant guilty of murder, it then becomes your duty to say what degree of murder, whether murder in the first or murder in the second degree. If you should be of the opinion that the defendant is guilty of murder in the first degree, and that there are no mitigating circumstances, your verdict then should be, "We find the defendant guilty of murder in the first degree, as charged in the indictment, and without any mitigating circumstances." But if you should be of the opinion that there are mitigating circumstances, your verdict then would be that "We find the defendant guilty of murder in the first degree, with mitigating circumstances." When a verdict of murder in the first degree, with mitigating circumstances, is rendered, then, under such verdict, the court has the power, in its discretion, to pronounce the death penalty, or to commute the punishment to imprisonment for life in the penitentiary.

55 If you should be of the opinion that the defendant is not guilty of murder in the first degree, but that he is guilty of murder in the second degree, your verdict would then be, "We find defendant not guilty of murder in the first degree, but we find that he is guilty of murder in the second degree," it then becomes your duty to fix his term of imprisonment in the penitentiary. In doing this you cannot fix it for less than ten nor more than twenty years.

If you should be of the opinion that the defendant is not guilty of murder in either the first or second degree, but that he is guilty of voluntary manslaughter, your verdict would then be that he is not guilty of murder in either the first or second degree, but that he is guilty of voluntary manslaughter. Should you find him guilty of voluntary manslaughter, it then becomes your duty to fix his term of imprisonment in the penitentiary. In doing this, you cannot fix it for less than two or more than ten years.

If you should be of the opinion that the defendant is not guilty of murder in the first nor murder in the second degree, nor of voluntary manslaughter, your verdict would then be that the defendant is

56 not guilty of murder in the first nor murder in the second degree nor of voluntary manslaughter, but that he is guilty of involuntary manslaughter. If you find him guilty of involuntary manslaughter

it then becomes your duty to fix the term of imprisonment in the penitentiary. In doing this you cannot fix it for less than one or more than five years, or you may, in your discretion, commute the punishment for involuntary manslaughter to imprisonment in the county jail for any period less than twelve months. If you acquit him altogether your verdict will not be guilty.

M. L. HALL, *Judge.*

The defendant asks the court to charge the jury—

1st. That drunkenness or intoxication is no defense to a crime, but the jury should look to the fact as determining the fact of premeditation or intent nesessary to constitute murder in the first degree.

2nd. The proof adduced must satisfy the mind that the death of the party slain was the ultimate result, which the concurring will, deliberation, and premeditation of the party accused sought, and if in
57 this case the defendant or Chamless, his associate, aiming a blow or shot at Phillip D. Bell, the father of deceased, designing to take his life, and the deceased jumped between and was killed, against the intention of def't, no injury to her being meditated by the defendant, the prisoner would not be guilty of murder in the first degree.

3rd. There must have existed in the mind of the defendant at the time of the killing a specific intention to take the life of the deceased, and if he with premeditated intent to slay the father of the deceased, against his intention killed the deceased, it will not be murder in the first degree.

4th. All the ingredients constituting murder in the first degree, to wit, premeditation, wilfullness, deliberation, and maliciousness toward the deceased must be embraced and made out by the proof, and if any one is wanting the absence of that one takes the offence out of the grade of murder in the 1st degree.

5th. All doubts must be given to the prisoner, and they, the jury, should find for the next lower grade, should there be no doubt as to that.

The court declines to adopt the foregoing as part of the charge,
58 and refuses to charge otherwise than already done Sept. 30, 1875.

M. L. HALL, *Judge.*

Def't asks the court to charge—

6th. That any statements from the defendant drawn out in evidence by the State are conclusive upon the State, as to the matter about which such statements have reference. The court declines to charge the above 6th as requested, but charges as follows: That any statements from the defendant drawn out in evidence by the State are conclusive upon the State as to the matters about which such statements have reference, unless they be disproved by the other evidence in the case, and the jury will judge of any such statements, if any, in connection with all the other evidence, and give to the whole body of the evidence such weight as they think it entitled to.

M. L. HALL, *Judge.*

The defendant excepted to the charge of the court, upon his six propositions submitted by him to be embodied in the charge of the court. The pleas of autrefois convict, overruled by the court, also excepted to.

On motion for new trial no affidavits were presented.

59 The defendant tenders this his bill of exceptions to the judgment of the court, overruling his motion for new trial.

[SEAL.] M. L. HALL, *Judge.*

Bill of costs.

State tax 5.00
County " 3.50
Dist. Att'y J. C. J. Williams 20.00
Clerk G. L. Maloney: Filing indict. 25; entering indict. on record, 300 words @ 10, 30c.; 2 capias @ 75, 1.50c.; 7 dockets @ 10=70c.; 15 subp. @ 10, for State, = 1.50.; 3 continuances @ 25=75; 9 orders @ 25=2.25; 2 motions @ 25=50c.; taking & filing 2 demurrers @ 25=50c.; filing affidavit, 25; plea, 25; jury, 50c; 7 wit. probates for State, @ 5=35; verdict, 25; judg't, 75; order of appeal, 25; transcript, 13,500 words @ 10=13.50; seal and cer't 50c 24.83
Sheriff M. D. Swan, capias, 1.00; 2 subp. for State, 50c; summoning 74 jurors @ 15=11.10 ..... 12.50
D. Sheriff G. B. Burleson, capias 1.00
" " J. W. Fox, 5 subp. for State @ 25 ..... 1.25
S. " " Joseph Bell, 2 subp. for State @ 25 50
" " " E. W. Hall, 2 " " " " " 50
60 Const. W. F. Gibbs, 2 subp. for State @ 25 50
S. wit. P. D. Bell, 6 days @ 1.00=6.00; 23 miles @ 4=92 & 2 tolls 20=... 7.12
S. wit. M. M. Buckley, 36 days @ 1.00, 120 miles @ 4=4.80, & 8 tolls 80c.=... 41.60
" " W. H. Demarcus, 32 " " " " , 119 " " 4=4.76, & 4 tolls=40=... 37.16
" " W. R. Lammie, 32 " " " " ; 125 " " 4=5.00 ..... 37.00
" " J. C. S. Bell, 37 " " " " ; 110 " " 4=4.40, & 2 tolls 20=... 41.60
" " Wash. Gentle, 25 days @ 1.00 ..... 25.00
" " R. I. Chamless, 24 " " " & 26 miles @ 4=1.04= 25.04
" " John Parker, 23 " " " & 84 " " 4=3.36= 26.36
" " Bony Craig, 1 " " 1.00

I, G. L. Maloney, clerk of the criminal court for the district of Knox, do certify that the following is a full, true, and perfect transcript of the proceedings had and entered of record, and now on file in the case of the State vs. Pryor Coleman, for murder, No. 1769, together with the bill of costs.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office in Knoxville, this the 16th day of November, 1875.

G. L. MALONEY, *Clerk.*

61 *Proceedings in the supreme court.*

On the 15th May, 1876, a paper was filed in the clerk's office of said supreme court, in the words and figures following, to wit:

Be it remembered that at a circuit court of the United States, begun and held for the eastern district of Tennessee, at the Federal court-room in Knoxville, within the sixth circuit, and in said district, upon the second Monday, it being the 10th day of January, 1876, the following proceedings were had, to wit:

There being no judge of the said court present, the court was regularly opened by Samuel P. Evans, United States marshal for the eastern district of Tennessee.

FRIDAY MORNING, *March* 17, 1876.

Court met pursuant to adjournment. Present and presiding, the honorable Connally F. Trigg, judge of the United States district court for the districts of Tennessee.

Petition for habeas corpus.

EX-PARTE PRYOR H. COLEMAN.

62 Be it remembered that this matter came on to be finally determined on this the 17th day of March, 1876, before the honor-

able Connally F. Trigg, judge, &c., upon the petition of Pryor N. Coleman for habeas corpus, and the record filed as evidence and the argument of counsel; all of which having been duly considered, the court is of opinion that the said Pryor N. Coleman, so far as he is held and detained under the charge of murder upon indictment No. 1769, in the criminal court of Knox County, by M. D. Swan, sheriff and jailer of Knox County, Tennessee, in the jail of said county, is so held and detained in custody in contravention of the Constitution and laws of the United States, and is therefore pleased to order, adjudge, and decree that the sheriff aforesaid, of the county and State aforesaid, release from his custody the said Pryor N. Coleman, so far as he is held and detained under said charge of murder, and that so far as said charge of murder is concerned he, the said Pryor N. Coleman, be permitted to go hence without hinderance or molestation.

The court is further pleased to order that the said Pryor N. Coleman pay the costs of this proceeding, for which let execution issue.

63 EASTERN DISTRICT OF TENNESSEE, *ss:*

I, H. M. Aiken, clerk of the United States circuit court for the said district, do hereby certify that the foregoing is a full, true, and perfect copy from the records of said court.

Given under my hand and the seal of said court, at Knoxville, this May 15th, 1876.

H. M. AIKEN, *Clerk.*

(Endorsed:) Filed May 15, 1876. J. F. Deaderick, clerk.

And on the 30th May, 1876, Hon. James W. Deaderick, chief justice, and Associate Justices J. L. T. Sneed, P. Turney, Rob't McFarland, and T. J. Freeman, presiding, the following order of court was made and entered of record, to wit:

PRYOR COLEMAN
vs.
THE STATE. } In error.

The plaintiff in error, by his attorney, produced and filed in
64 court a certified copy of the judgment of the United States circuit court for the eastern district of Tennessee, on his petition for habeas corpus, and moved for a discharge of the said plaintiff in error; which motion is ordered to be entered of record for consideration by the court.

And on the 15th day of June, 1876, the Hon. J. L. T. Sneed, acting chief justice, and Associate Justices P. Turney, Robert McFarland, and B. J. Lea, presiding, the latter sitting as special judge, duly appointed and sworn in place of Hon. T. J. Freeman, who had certified to the governor his temporary inability to preside on account of sickness, the said cause was heard and argued before the court; and on the 24th June, 1876, the opinion of the court was delivered, in the words and figures following, to wit:

65 PRYOR COLEMAN
vs.
THE STATE.

Opinion.

The plaintiff in error was indicted in the criminal court of Knox

County, convicted of murder in the first degree, and sentenced to be hanged for the killing of Mourning Ann Bell, from which judgment he appealed to this court. After conviction and appeal, he applied to Hon. Connelly F. Trigg, judge of the United States district court for the eastern district of Tennessee, &c., for *want* of habeas corpus, and moved for and procured his discharge on the ground that, while in the military service of the United States and subject to the Articles of War, he was tried and convicted of the same murder with which he stands charged by the indictment in this case, by a court-martial convened under the laws of the United States during the existence of the civil war. He has been subsequently rearrested under process of capias issued from this court when the appeal was pending at the time of his discharge by Judge Trigg.

66 In his defense now he relies, as he did in the Federal court, upon section 30 of an act of Congress approved March 3rd, 1863, which provides that in time of war, insurrection, or rebellion, murder, assault and battery with intent to kill, manslaughter, mayhem, wounding by shooting with intent to commit murder, robbery, arson, burglary, rape, assault and battery with intent to commit rape and larceny, shall be punishable by the sentence of a general court-martial, a military commission, when committed by persons who are in the military service of the United States and subject to the Articles of War; and the penalty of such offenses shall never be less than those inflicted by the law of the State, Territory, or district in which the offense may have been committed, and upon the act of 5th February, 1867, providing for writs of habeas corpus, &c. It is as much the duty of the courts of States as of the Federal courts to construe, apply, and enforce acts of constitutional regulations, when presented in cases before them. State courts having jurisdiction cannot ordinarily be ousted thereof by an ex-parte proceeding directed from the Federal court.

67 The acts of 5th Feb., 1867, providing for the grants of writs of habeas corpus to persons restrained of liberty in violation of the Constitution or of any treaty or law of the United States, did not increase the powers or jurisdiction of the several courts of the United States and the several judges and justices thereof. The enactment is merely the amendment of a principle and element of power and jurisdiction inherent in the courts, and as capable of enforcement without as with the aid of the statute referred to, and existing as fully in the State as in the Federal courts, both acting under and in subordination of the United States.

But even if this were not so, the plaintiff in error does not bring himself within either the spirit or letter of the law; he is not restrained of liberty in violation of the Constitution of the United States, nor of any treaty or law thereof. It could not have been intended by Congress to attempt to confer upon the Federal court or any of its judges a jurisdiction to interfere with State courts in their exercise of rightful jurisdiction of offenders against the laws of the State, especially when, as in this

68 case, the question relied on in defense is made by the pleadings in the court of the State, with the indisputable right in the accused to have the action of this court reversed in the Supreme Court of the United States, should he desire.

We are clearly of opinion that, when the courts of the State have jurisdiction of the person and subject-matter it was certainly without the jurisdiction of the Federal court to interfere with and attempt to supersede the former, and its judgments and decrees in so attempting are nullities.

It is next insisted it was error in the judge of the criminal court to sustain the demurrer to the plea of former conviction for the same identical murder by a court-martial. The consideration of this question necessitates inquiry as to the objects and purposes of the act of Congress of 3 March, 1863. This statute was made for "a time of war, insurrection, or rebellion," and is to be applied to persons "who are in the military service of the United States and subject to the Articles of War." The act is an Army regulation, not less nor more, meant for the government and control of the soldiery and none others, nor does it in-
69 tend or contemplate the repeal or suspension of the laws of the State, but on the contrary, in its terms, recognizes them. By assuming the military service and subjecting himself to the laws provided for its government, the accused did not divest himself of the duty to obey the injunctions of the civil law. The fact that each inflicts similar punishment for crime can make no difference; they intend to affect different relations and enforce different obligations.

In United States v. Marigold (9 Howard), Judge Daniel says: "With a view of avoiding conflict between the State and Federal jurisdiction, this court, in the case of Fox vs. The State of Ohio, have taken care to point out that the same act might, as to its character and tendencies and the consequencies involved, constitute an offense against both the State and Federal government, and might draw the penalties denounced by either, as appropriate to its character in reference to each. We think this distinction sound, as we hold to be the entire doctrines laid down in the case above mentioned, and regard them as being in no wise in conflict with the conclusions adopted in the present case."

In Moore v. The People of the State of Illinois (14 Howard), Grier, judge, says: "Every citizen of the United States is also a citizen of a State or Territory. He may be said to owe allegiance to two sove-
70 reigns, and may be liable to punishment for an infraction of the laws of either. The same act may be an offense or transgression of the laws of both. Thus, an assault upon the marshal of the United States and hindering him in the execution of legal process, is a high offense against the United States, for which the perpetrator is liable to punishment, and the same act may also be a gross *bearer* of the peace of the State, a riot, assault, or a murder, and subject the same person to a punishment under the State laws for a *disdemeanor* or a felony. That either or both may (if they see fit) punish such an offender, cannot be doubted, yet it cannot be truly averred that the offender has been twice punished for the same offense, but only that by one act he has committed two offenses, for each of which he is justly punishable. He could not plead the punishment by one in bar to a conviction by the other."

In one of the cases involving a construction of the enforcement act, decided in March last, Ch. Justice Waite delivering the opinion of the court, after announcing the doctrine just quoted, and employing almost the same language as in Moore v. The People of Illinois, adds:
71 "This does not, however, necessarily imply that the two governments possess powers in common, or that bring them into conflict with each other. It is the natural consequence of a citizen's life which owes its allegiance to two sovereignties, and claims protection from both. The citizen cannot complain, because he has voluntarily submitted *to* himself to such a form of government; he avers allegiance to the two departments, so to speak, and within their respective spheres must pay the penalty which each exacts for disobedience to the law."

In the same opinion he defines the Government of the United States

as one of delegated powers alone, and *nolas* that all powers not granted to it by the Constitution are reserved to the States or the people. This has been an universally principal of the union of the States from the formation of the Federal Government, and seems to us to be conclusive of the question presented here, there being no grant of power, directly or indirectly, to divest a State of its power to punish its citizens for *re*-fraction of its laws. The Constitutional provision, that no person shall be subject for the same offense to be twice put in jeopardy of life or limb, means to be protected against a 2nd punishment for the
72 same act of violation against one sovereign, and not that a person may not be guilty and punishable for two distinct crimes perpetrated by one act violative of the laws of different governments or different municipal authorities of the same government.

We have treated this defense as if it were formally and technically made.

The accused shows by his plea that no punishment was inflicted in execution of a judgement of court-martial.

The facts make a clear case of murder in the first degree; in fact, no defense is offered on the merits.

Affirm the judgment.

TURNEY, *Judge.*

And on said 24th June, 1876, Hon. J. S. T. Sneed, acting chief justice, and associate justices P. Turney and Rob't McFarland, presiding, the judgment of the court was entered of record, in the words and figures following, to wit:

73 PRYOR H. COLEMAN
vs.
THE STATE. } In error. Murder.

Comes the atto. gen'l to prosecute for the State, and the pl'ff in error is brought to the bar of the court in the custody of the sheriff of Knox County, and appeared also by counsel, and the record having been read and argument heard, and the court being of opinion that there is no error in the record of the court below, it is therefore considered by the court that the judgment of the criminal court of Knox County, in this case, be and the same is affirmed; that, for the offense of murder in the first degree, of which he has been convicted, the said plaintiff in error, Pryor Coleman, be remanded to the jail of Knox County, there to be safely kept until Friday, the 18th day of August, 1876; and on said 18th day of August, 1876, bebetween the hours of 10 o'clock a. m. and 3 o'clock p. m., at some convenient place within one mile of the corporate limits of the city of Knoxville, the said sheriff of Knox County shall execute this judgement of the court, and shall hang the said Pryor Coleman by the neck until he is dead.

74 It is further ordered, that the said Pryor Coleman pay the costs of this prosecution, for which execution may issue, and that the clerk furnish to said sheriff of Knox County a copy of this judgment, to be and continue his authority for the execution of the same.

And on the 28th day of June, 1876, the same justices presiding, the following further proceeding was had and entered of record, to wit:

PRYOR N. COLEMAN
vs.
THE STATE.

The said Coleman, as plaintiff in error, having applied for and obtained a writ of error to the Supreme Court of the United States, and all the necessary steps having been taken, this court is pleased to order and direct that all the further proceedings in this case be stayed, subject to the future orders of the said Supreme Court of the United States; and the clerk of this court will certify the record in the case to the said Supreme Court of the United States, that the same may be proceeded in accordance to the practice in case of writ of error in said court.

75 "And the atto. gen'l who prosecutes for the State waives all questions of notice and the formal issuance and service of citation, and hereby accepts and acknowledges the same."

And on the said 28th of June, 1876, the writ of error from the U. S. circ't court for the eastern district of Tennessee was filed in said cause, in the words and figures following, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Tennessee, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, or some of you, being the highest court of law of the said State in which a decision could be had in the said case, wherein the State of Tennessee is plaintiff and Pryor H. Coleman is defendant, wherein was drawn in question the construction of a clause of the Constitution of the United States and an act of Congress of 3rd of March, 1863, and other Federal laws, and the decision was against the right, priv-

76 ilege, and exemption specially set up or claimed under such clause of the Constitution, and under the said act of Congress and other Federal laws, a manifest error hath happened, to the great damage of the said Pryor N. Coleman, as by his complaint appears: we, being willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment therein be given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with the writ, so that you may have the same at Washington on the second Monday of October next, in said Supreme Court of the United States to be then and there held, that, the record of proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 27th day of June, in the year of our Lord one thousand eight hundred and seventy-six, and of the

77 Independence of the United States the one hundredth.

[SEAL.]

H. M. AIKEN,
Clerk of the U. S. Circuit Court for the Eastern District of Tennessee.

78 *Corrected bill of costs in criminal court.*

State tax	5 00
County "	3 50
Dist. att'y J. C. J. Williams	20 00
Clerk G. L. Maloney: Filing indict., 25; entering indict. on record, 300 words @ 30c; 2 capias, 1.50c.; 7 dockets=70c.; 15 subp. @ 10, for State=1.50c.; 3 continuances @ 25=75; 9 orders=2.25; 2 motion=50c.; filing 2 demurrers, 50c.; affidavit, 5; plea, 25; jury, 50c.; 7 wit. probates for State, 35; verdict, 25; jud't, 75; taxing costs, 50	10 90
Sheriff M. D. Swan, capias, 1.00; 2 subp. for State, 50c.; summoning 74 jurors @ 15=11.10	12 60
D. Sheriff G. B. Burleson, capias	1 00
" " J. W. Fox, 5 subp. for State	1 25
S " " Joseph Bell, 2 subp. for State	50
79 S D. Sheriff E. W. Hall, 2 subp. for State	50
Const. W. F. Gibbs, " " " "	50
S. Wit. P. D. Bell, 6 days @ 1.00=6.00; 23 miles @ 4=92, & 2 tolls, 20=	7 12
" " M. M. Buckley, 36 days @ 1.00; 26 miles @ 4=4.80, & 8 tolls, 80c	41 60
" " W. N. Demarcus, 32 " " " ; 119 " " "=4.76, & 4 tolls,=40=	37 16
" " W. R. Lammie, 32 " " " ; 125 " " "=5.00=	37 00
" " J. C. S. Bell, 37 " " " ; 110 " " "=4.40, & 2 tolls, 20=	41 60
" " Wash Gentle, 25 days @ 1.00=	25 00
" " R. I. Chamless, 24 " " " & 26 miles @ 4=1.04=	25 04
" " John Parker, 23 " " " & 84 " " "=3.36=	26 36
" " Bony Craig 1 " " "	1 00
	$297 68

Judgment, June 24, 1876, vs. pl'ff in error.

Costs of supreme court.

State tax	5 00
Cl'k Deaderick: Filing record, 75; 5 rules on dockets, 50; 7 docketings, 70; taxing 2 bills, costs, 1.00; judgment, 75; motion entered, 20; 2 orders of court, 50; transcript for U. S. Supreme Court, 50 words, 18.25; seal, 50	22 15
80 Clerk G. L. Maloney: transcript of records, 13,500 words, 13.50; order for appeal, 25; seal, 50	14 25
	$41 40
Cl'k Deaderick, express charges, 50=	50
	$41 90

Judgment, June 24, 1876, vs. plaintiff in error.

STATE OF TENNESSEE:

I, J. F. Deaderick, clerk of the supreme court of said State, at Knoxville, do hereby certify that the foregoing is a full and true copy of the records & of the judgment pronounced by said court in the cause therein named, at its May term, 1876, as the same appears of record in my office.

Given under my hand and the seal of said court, at office in Knoxville, this 4th day of December, 1876.

[SEAL.] J. F. DEADERICK, *Clerk.*

(Indorsement on cover:) No. 664. Pryor N. Coleman, plaintiff in error, vs. The State of Tennessee. Tennessee sup. court. Filed 13th March, 1877.

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 344.

PRYOR N. COLEMAN, PLAINTIFF IN ERROR,

vs.

THE STATE OF TENNESSEE.

STIPULATION OF COUNSEL AND ADDITION TO RECORD.

FILED NOVEMBER 1, 1878.

1 STATE OF TENNESSEE,
Supreme Court at Knoxville:

PRYOR COLEMAN, in error,
vs.
THE STATE.

Supplement to Transcript.

Be it remembered that the following records from the U. S. circuit court for the eastern division of Tennessee, held at Knoxville, were filed in this cause May 30, 1876, and read at the hearing, and are in the words and figures following, to wit:

To the Honorable Connally F. Trigg, judge of the United States district court for the eastern district of Tennessee, holding the circuit court of the United States in and for said district at Knoxville, Tennessee.

The petitioner, Pryor N. Coleman, a citizen of the State of Tennessee, complaining to your Honor, shows that he is unlawfully restrained of his liberty, and detained and imprisoned by M. D. Swan, sheriff and jailor of Knox county, Tennessee; that he is detained and imprisoned in the jail of Knox county
2 on the charge of murder, said charge having been preferred by the State of Tennessee, and by virtue of an indictment and pretended trial and proceeding against him in the criminal court of Knox county. Petitioner states that in said proceeding he was convicted and sentenced of and for the crime of murder, and is now held under said sentence. The record and other proceedings will be presented at the hearing of this application, it being impracticable to furnish copies thereof owing to the poverty of the petitioner and his inability to pay for such copies.

The petitioner charges and shows your Honor that at the time of the alleged offense he was a soldier in the military service of the United States, having enlisted in the 1st regiment of Tennessee cavalry, company "G" of said regiment, on the 1st day of October, 1861; that he served in said company and regiment from said date to the 21st day of July, 1865, when he was discharged from said service; that the alleged offense of murder was committed, if at all, at a time between the said date of enlistment and the said discharge of petitioner, and while he was in the service of the United States, as aforesaid, and subject to the articles of war; that at the time the said offense is alleged
3 to have been committed, and before and after said time, the petitioner was in the said military service of the United States, and subject to the articles of war as aforesaid; that at said date and time the military forces of the United States then and

hitherto had and continued to have military occupation of East Tennessee for and during the said time of the alleged commission of said offense; that East Tennessee was then a military district of and under the authority of the United States Constitution and laws made in pursuance thereof; that Knox county was then situate and included in said military district in and at the time said murder in the said indictment was and is now alleged to have been committed; that the said military authorities so holding and occupying the said district, and having its armies and military commands in the occupation and control of said district in which Knox county is situate as aforesaid, and the petitioner being then an enlisted man and regular volunteer soldier of and in the said military service of the United States, attached to, regularly mustered in, and occupying the position of corporal in company "G," 1st regiment Tennessee volunteer cavalry, owing service to and actually rendering the same in the said military command, and being subject to the articles of war of the United States Government, &c., was then and there, in the said military district, by virtue of said military authority, arraigned before a general court-martial convened at Knoxville, Tennessee, on the 27th day of March, 1865, by general order No. 66, and dated at Knoxville, headquarters of said military district, on the the 24th day of March, 1865; and being so arraigned before said general court-martial, and then and there charged and tried before said tribunal upon charges and specifications setting forth, defining, and charging him with the identical same acts of killing and murdering, &c., and with the identical same murder of the identical same person, constituting and being the identical same offense with which he is charged in the indictment under which he was tried and convicted, as shown in a previous part of this petition. And the said petitioner avers that said general court-martial had exclusive jurisdiction to try and punish him for said alleged offense of murder, and that the said court-martial did regularly and lawfully as prescribed by the Constitution and laws of the United States proceed to judgment in the said case of murder, which judgment of said military court has never been revoked, but stands in full force and effect. Petitioner further avers that by reason of the matters and things hereinbefore set forth and shown the exclusive jurisdiction to try and punish him for said alleged offense was vested in the said court-martial, and that the State courts never had nor can have jurisdiction of the same.

In consideration of the premises the petitioner applies to your Honor, praying that a writ of *habeas corpus* may issue, directed to the said M. D. Swan, in his behalf, that he may be forthwith brought before your Honor, to do and submit to, and receive what the law requires; and that he may be restored to his liberty,

&c. This, and the petition to which this is an amendment, constitute the first application for a writ of *habeas corpus* in this case.

PRIOR N. COLEMAN.

STATE OF TENNESSEE,
Knox County:

Pryor N. Coleman, the petitioner, came before me, H. M. Aiken, clerk of the United States circuit court, for the eastern district of Tennessee, and makes oath and says, that the
6 matters and things in his foregoing petition contained, are true, to the best of his knowledge, information and belief.

PRIOR N. COLEMAN.

Sworn to, and subscribed before me, March 11, 1876.

H. M. AIKEN, *Clerk.*

(Endorsed.) Petition for writ of *habeas corpus.* In the matter of Prior N. Coleman, *ex-parte.* Filed, March 11, 1876.

H. M. AIKEN, *Clerk.*

The President of the United States of America, to M. D. Swan, sheriff and jailor, of Knox county, Tennessee:

You are hereby commanded to produce, upon Monday, March 13, 1876, at 10 o'clock, a. m., before the United States circuit court, for the eastern district of Tennessee, at the Federal court room, in Knoxville, the body of Pryor Coleman, who alleges that he is illegally and wrongfully detained and imprisoned, by you, in the jail of Knox county.

You will also make return to this writ, making known by what authority you detain and imprison the said Pryor Coleman, and show cause, if any you have, why he should not be restored to his liberty.

Witness, the Honorable Morrison R. Waite, Chief Jus-
7 tice of the Supreme Court of the United States, at Knoxville, in the eastern district of Tennessee, the 11th day of February, in the year of our Lord 1876, and of our Independence.

H. M. AIKEN, *Clerk.*

A true copy. Attest:

H. M. AIKEN, *Clerk.*

(Endorsed.) Copy of writ of *habeas corpus.* In matter of Pryor Coleman, *ex-parte.* Issued March 11, 1876.

H. M. AIKEN, *Clerk.*

Came to hand same day issued, and executed by bringing the defendant, Pryor Coleman, into court, and, as sheriff, make the following statement: I hold the said Coleman in custody by virtue of a capias from the criminal court of Knox Co., Tenn., for the offence of murder—and his case having been heard, is now in the supreme court of Tenn., at Knoxville, by appeal on the part of defendant, Coleman. Also an indictment, found in January term of the criminal [court,] 1876, for assisting Joseph Ayers in making his escape from the Knox county jail, this the 13th day of March, 1876.

M. D. SWAN,
Sheriff.

1 UNITED STATES OF AMERICA,
War Department,
Washington City,
April 17th, 1875.

Pursuant to the act of Congress of the 22nd February, 1849, I, H. T. Crosby, chief clerk, in the absence of the Secretary of War, do hereby certify that the annexed is a true copy of the trial by general court martial of Corporal Pryor Coleman, Co. G, 1st Tenn. vol. cav., as per special orders No. 66, dated headquarters district of E. Tennessee, Knoxville, Tenn., March 24th, 1865, on file in this Department.

In witness whereof I have hereunto set my hand and caused the seal of the War Department to be affixed, on the [SEAL.] day and year first above written.

H. T. CROSBY,
Chief Clerk for the Secretary of War in his absence.

2 Proceedings of a gen'l court martial which convened at Knoxville, Tenn., by virtue of the following special order, to wit:

HEADQUARTERS DIST. OF EAST TENNESSEE,
Knoxville, Tenn., *March* 24th, 1865.

Special Orders }
No. 66. }

II. A general court martial is hereby appointed to meet at Knoxville, Tenn., on the 27th day of March, 1865, or as soon thereafter as practicable, for the trial of such prisoners as may be brought before it. It will sit without regard to hours.

Detail for the Court.

1. Col. R. W. Ratliff, 12th Ohio vol. cavly.
2. Capt. A. F. McMillen, 1st U. S. col'd. artly (h'vy.)
3. Capt. D. C. Dossett, 9th Tenn. vol. cavly.

4. 1st Lieut. J. B. Miller, 13th Tenn. vol. cavly.
5. 1st Lieut. A. R. Rogers, 2nd Ohio vol. hv'y. artly.
6. 1st Lieut. H. C. Holt, 2nd " "
7. 1st Lt. Sam'l. Saylor, 1st " "
8. 1st Lt. James A. Hedges, 2nd " "
9. 1st Lt. L. W. Schearman, 1st U. S. col'd. artly (hv'y.)
10. 2nd Lt. S. H. Towler, 22nd Ohio baty., vol. lt. arty.
3 11. 2nd Lt. Martin Redkey, 2nd Ohio vol. hv'y. arty.
12. 2nd Lt. S. H. Jordan, 1st U. S. col'd. artly., hv'y.
13. Lt. D. C. Howard, 1st Ohio vol. hv'y artly.

Capt. E. J. Brooks, 10th Michigan vol. cavy., judge advocate.

No other officers than those named can be assembled without manifest injury to the service.

By command of Maj. Genl. Stoneman.

(Signed) R. MORROW,
Asst. Adjt. Genl.

Official:

H. G. GIBSON,
Col. 2nd O. H. A. and A. A. A. G.

And also in accordance with the following, to wit:

HEADQUARTERS DIST. OF EAST TENN,
Knoxville, Tenn., *March* 31st, 1865.

Special Orders No. 73.

* * * * * *

II. The following named officers are hereby relieved from duty as members of the genl. court martial convened by special orders No. 66, current series, from the headquarters.

4 1st Lieut. J. B. Miller, 13th Tenn. vol. cavy.
2nd Lieut. S. H. Jordan, 1st U. L. cold. artly (hv'y.)
2nd Lieut. D. C. Howard, 1st Ohio vol. hv'y. artly.

III. Capt. W. H. Jordon, 11th Michigan vol. cavly., 1st Lieut. Geo. W. Douglass, 8th Tenn. vol. infty., and 1st Lt. John L. Morris, 1st U. S. col'd artly., are hereby detailed as members of the genl. court martial convened by special orders No. 66, C. S., from these head qurs.

By command of Maj. Genl. Stoneman.

(Signed) H. G. GIBSON,
Col. 2nd O. H. Arty. and A. A. A. G.

And also in accordance with the following order, to wit:

HEAD QURS. DIST. OF EAST TENN.,
Knoxville, Tenn., *April* 19th, 1865.

Special Orders No. 89.

II. The following named officers are hereby relieved from duty

on genl. court martial convened by special orders No. 66, C. S., from these head qurs., and ordered to report to their respective commands without delay for duty: Capt. A. T. McMillen, 1st U. S. col'd arty. (hv'y); 2nd Lieut. Martin Redkey, 2nd Ohio vol. hv'y arty.

5 By command of Maj. Genl. Stoneman.

(Signed,) H. G. GIBSON,
Col. 2d O. H. Arty. & A. A. A. G.

KNOXVILLE, TENN., *May 9th*, 1865, 9 o'clock, A. M.

Court met pursuant to adjournment. Present:

Col. R. W. Ratliff, 12 Ohio vol. cavly.
Capt. D. C. Dossett, 9th Tenn. vol. cavly.
Capt. W. H. Jordon, 11th Michigan vol. cavly.
1st Lieut. A. R. Rogers, 2d Ohio h'vy artly., vols.
1st Lt. H. C. Holt, 2d " "
1st Lt. Saml. Saylor, 1st " "
1st Lt. James A. Hedges, 2d " "
1st Lt. W. Schearman, 1st U. S. col'd arty., h'vy.
1st Lt. Geo. W. Douglass, 8th Tenn. vol. infty.
1st Lt. John L. Morris, 1st U. S. col'd arty., h'vy.
Capt. E. J. Brooks, 10th Michigan vol. cavly., judge advocate.

Absent.

2d Lt. S. H. Fowler, 22d Ohio baty., vol. lt. arty.

The Judge Advocate read a communication from Lieut. Fowler, explaining the cause of his absence.

6 The proceedings of last meeting were read by the Judge Advocate, and approved. The court then proceeded to the trial of Corpl. Pryor Coleman, Co. "G," 1st Tenn. cavly., vols., who was brought before the court, and having heard the order appointing the court read, was asked if he had any objection to any member named in the order. To which the accused replied that he had no objection to any member named in the order. The members of the court were then severally duly sworn by the judge advocate, and the judge advocate was duly sworn by the president of the court, all of which oaths were administered in the presence of the accused.

The accused, Corpl. Pryor Coleman, C. G., 1st Tenn. vols., cavly., was arraigned on the following charge and specifications, to wit:

Charge I. Desertion.

Specification. In this, that Pryor Coleman, corp'l Co. "G," 1st Tenn. vol. cavly., having been duly enlisted in the service of the United States, did, on or about the 15th day of October, 1864, absent himself from his company and regiment, and did

7 desert the service of the United States, at or near Nashville, State of Tennessee, and did remain absent until arrested, in Knox county, State of Tennessee, on or about the 7th day of February, 1865.

Charge II. Robbery.

Specification. In this, that the said Pryor Coleman, corp'l company "G," 1st Tenn. cavly., vols., on or about the seventh day of February, 1855, at about the hour of 10 o'clock of the night of the said day, at the residence of Philip D. Bell, citizen of Knox county, State of Tennessee, did make an assault upon the said Philip D. Bell, and feloniously and violently, and against his will, steal, take and carry away five dollars ($5.00) in money, of the goods and chattels of the said Philip D. Bell.

Charge III. Assault and battery with intent to kill.

Specification. In this, that the said Pryor Coleman, corporal company "G," 1st Tenn. cavl'y vols., on or about the 7th day of February, 1865, (eighteen hundred and sixty-five,) at the hour of 10 o'clock P. M. of said day, at the house of Philip D. Bell,
8 citizen, of the county of Knox, State of Tennessee, feloniously and violently did make an assault upon, and with a pistol held in the hands of the said Pryor Coleman, did bruise, wound and illtreat, and did threaten to, and attempt to, shoot, and did shoot at the said Philip D. Bell, with intent to kill the said Philip D. Bell.

Charge IV. Murder.

Specification. In this, that the said Pryor Coleman, corp'l company "G," 1st Tenn. cavly., vols., at about the hour of ten o'clock P. M., on or about the (7th) day of February, eighteen hundred and sixty-five, at the residence of Philip D. Bell, citizen, of the county of Knox, State of Tennessee, did wilfully and feloniously kill and murder Mornan A. Bell, daughter of the said Philip D. Bell, by shooting her, Mornan A. Bell, as aforesaid, through the head with a pistol, the same being held in the hand of the said Pryor Coleman.

To which charges and specifications the accused pleaded as follows, to wit:

Charge I. To the specification—Guilty.
To the charge—Not guilty.
Charge II. To the specification—Not guilty.
9 To the charge—Not guilty.
Charge III. To the specification—Not guilty.
To the charge—Not guilty.
Charge IV. To the specification—Not guilty.
To the charge—Not guilty.

Capt. S. P. Bryant, Jr., company "B," 10th Michigan vols., cavalry, a witness for the prosecution, was duly sworn.

Question by the Judge Advocate. What is your name, rank, company, and regiment, and what duties have you been employed since the 1st of February, 1865?

Answer. Samuel T. Bryan, Jr., captain company "B," 10th Michigan cavalry; on and since the 1st day of February I was detailed as act'g ass't provost marshal general, East Tennessee.

Question by Judge Advocate. What is the name, rank, company, and regiment of the accused?

Answer. Pryor Coleman, corp'l company "G," 1st Tenn. cav'ly; so he told me.

Question by Judge Advocate. What and how do you know of his being absent from his command?

Answer. By his own answer to my inquiries; I don't
10 recollect whether he gave the date of his being absent from his regiment or not; he gave his name, rank, and command, and also stated that he had no permission to be absent.

Question by Judge Advocate. How and at what date did the accused first come into your hands?

Answer. He came in arrest, brought by some citizens of this county; I do not recollect the exact date; it was about the eighth, ninth, or tenth of February, 1865, I think.

Question by Judge Advocate. Do you know whether the accused had any arms when he was arrested? If so, state what you know.

Answer. A Colt's army pistol was brought by the citizens, said to belong to him; the accused acknowledged to me that it was his pistol; a Colt's army revolver, number (104,952) one hundred and four thousand nine hundred and fifty-two was shown the witness, and he was asked——

Question by Judge Advocate. State what pistol this is, and by what marks you recognize it.

Answer. It is the same pistol handed to me by the parties bringing in the accused; there were traces of blood on
11 the under side of the barrel, near the lever, which can still be seen; there is also a difference in the number on the pistol that I noticed; the number on the barrel and the number on the guard are different; the number on the barrel is (103,965) one hundred and three thousand nine hundred and sixty-five; the number on the guard is (104,952) one hundred and four thousand nine hundred and fifty-two.

The accused stated that he had no questions to ask the witness.

Question by Court. Did the accused acknowledge the pistol shown to you to be his; if so, what did he say?

Answer. I asked him if that was his pistol, and he answered yes, or words to that effect.

Question by Court. Did the accused make these confessions to you under fear or compulsion, or from any hope of reward or favor?

Answer. I think not; I made no threats of punishment or promises of favor to him.

Philip D. Bell, citizen, a witness for the prosecution was duly sworn.

Question by Judge Advocate. What is your name, and where do you reside?

12 Answer. My name is Philip D. Bell; I live in the seventh district of Knox county, on Beaver creek.

Question by Judge Advocate. State when and where you first saw the accused.

Answer. I first saw him at my own house the seventh night of March, eighteen hundred and sixty-five, agreeably to my recollections of it.

Question by Judge Advocate. State what transpired at your house at that time.

Answer. I had been working that day and was tired, and went to bed and went to sleep, and my daughter, Mornan Ann, who was killed, came and waked me up, and told me there were two soldiers out in the yard there who wanted to stay all night, and I got out of bed and told her to open the door and let them in. Before she opened the door they told her to make a light, and she did so. She opened the door, and the accused and the other man came in, each holding a pistol in his hand. This man, the accused, told the other to shut the door, and he did shut it and placed himself against it. The accused advanced and de-

13 manded five hundred dollars, or he would kill me right forthwith. He then walked around to where I was, and we were up close together. I had hold of the rounds of a chair, but do not know whether I intended to strike him or not. I suppose I was knocked down, but I was so dead that I do not know it. I was stricken on both sides of the head, so badly that I was under the doctor's care for a month. The last that I recollect he had his pistol in his hand.

Martha M. Bell, a witness for the prosecution, was duly sworn:

Question by Judge Advocate. What is your name, and where and with whom do you reside?

Answer. Martha M. Bell; I reside in Knox county, with my father, Phillip D. Bell.

Question by Judge Advocate. When and where did you first meet the accused?

Answer. He came to our house on the seventh night of March, eighteen hundred and sixty-five.

Question by Judge Advocate. State what transpired at your house, while the accused was there, that night?

14 Answer. They—the accused and Chambers—came there about ten o'clock, and wanted to come in, and my sister, that was killed, let them in. They said they were soldiers, and wanted to see father, to get to stay all night; and when they came in the accused advanced towards the fire, and ordered Chambers to close the door and keep it fast, which Chambers did, closing the door and standing with his back against it, with his pistol in his hand. The accused asked of my father if he had any arms; he told him he had nothing but the rifle in the rack, and then the accused demanded that father should put him up five hundred dollars, or he would kill him instantly. Father told him he could not put up the money, for he did not have it. He then demanded it again of him, and asked if he was going to put it up. I told him that father did not have the money, for the Government had not paid his claims yet. The accused then tried to shoot him, and bursted, I think, two caps at him; about that time I looked, and saw Chambers pointing his pistol

15 at father, and I jumped, and threw his hand up, and held it up, so he could not shoot father, and there was some little time that I did not see what the accused was doing. When I caught Chambers' hand to throw it up, my sister, Moran Ann Bell, was standing between the accused and my father, trying to protect my father, and begging the accused, for God's sake, not to kill father; and he cursed her, and told her if she did not go away, he would kill her, and she told him that she would rather die at father's feet than to give up and not try to save him. The one that I was holding, at the door, got away from me, and got up to where the other one was; I got in between him and my father, and pushed him back towards the fire-place, and then he throw'd me off. They had bursted so many caps that I thought they would kill us all, and when he pushed me off, I ran to the door and raised a scream, and thought "may be some one will hear it," and come to our relief, and while I was at the door mother raised a scream, and said, God of heavens, they have *have* killed them both. When I started to go to the door, they were both snapping their

16 pistols at father and sister, and while I was at the door there was one or two shots fired, and when mother screamed, I started towards her, and just then there was another shot fired; then I thought they had shot mother. I had forgotten that my sister Margaret was up stairs, and they would not let her down, and I thought I was the only one left, and I broke and run, and they both broke out after me, one of them, I [think] the accused, was in advance, and called to me to halt; I did not

do so the first time, and the second time he called to me to halt, I did so, and turned back to him. I thought he would kill me anyhow, and as I came up to him, he snapped a cap at me, and said if I did not stop my noise, he would kill me anyhow. I told him if he would not kill me I would go back into the house, and did so.

When I went in mother told me to get what money there was and give to them, and I went to the bureau and got what money I could find and laid it on the table, and one of them—Chambers, I think it was—took it up. I think the accused had a chunk of fire, and was putting it in the house at that time. He was
17 threatening us then that he would kill us all and then burn the house if we did not put up the five hundred dollars. About that time my father, who had been knocked down and laying on the floor for some time apparently dead, came to, and raised up with his head on one hand, and the accused went up to him and demanded the money again, and father muttered something, and then the accused pointed his pistol at him and bursted one or two caps, but the pistol did not go off, and then he went around and with his pistol struck father across the eye, and father fell back apparently dead. He then walked out and put the fire on the floor between where father and my sister lay, and swore he would burn the house. He went back to the fireplace after knocking off the fire from the brand, and as they started from the house carried the firebrand and laid it on the floor near where mother was, and knocked the coals off on the carpet. They both swore they had a couple of loads yet for father's body, and turned
18 round with their pistols in their hands and swore they would shoot father as he was lying on the floor, and mother and I threw ourselves between them and father, and begged them with uplifted hands not to kill him, and then they went out and tried to fasten the door behind them, and said they would put a guard on around the house while it was burning, and I did not see them again that night.

Question by Judge Advocate. At the time you returned into the house where and in what condition did you find your sister Moran Ann?

Answer. She was lying on the floor a lifeless corpse. The ball had struck her in the cheek near her nose, and came out the back part of her head. I did not see where it came out. When I lifted her up her head was in a gore of blood. It was but a very few minutes after she was shot that I went and lifted her up in my arms to see whether she was killed or not, and found her dead.

Question by Judge Advocate. What amount of money did they take from you?

Answer. I cannot tell; I never looked. It was folded
19 up, and Chambers, I think, said it was a dollar.

Question by Judge Advocate. Where is Chambers?

Answer. He is said to be killed.

The accused stated he had no questions to ask the witness.

Question by Court. Was your sister shot at the time you was holding the soldier's arm up against the door?

Answer. No, sir; she was shot after that—when I was at the door calling for help that she was shot. I did not see her shot.

Margaret J. Bell, a witness for the prosecution, was duly sworn.

Question by Judge Advocate. What is your name, and where do you reside?

Answer. Margaret J. Bell; I reside with my father, Phillip D. Bell, in Knox county.

Question by Judge Advocate. Where did you first meet the accused?

Answer. There at my father's house, coming to the door.

Question by Judge Advocate. *Where* was it that you met him there?

Answer. The seventh (7th) night of March.

20 Question by Judge Advocate. Was any one injured that night at your father's house? If so, who was it and by whom were the injuries committed?

Answer. My father was injured and my sister was killed by the two soldiers who came there.

Question by Judge Advocate. Did you see the soldiers when they committed the injuries upon your father and killed your sister? If not, for what reason?

Answer. No, sir; I did not see it. I was up stairs, and they would not let me down. I opened the door twice and they shut it to, and told me if I opened the door again they would shoot me, and did shoot at me, and the ball went through the door into the ceiling.

The accused stated that he had no questions to ask the witness.

Captain Samuel P. Bryan came before the court and asked to be allowed to make a correction in his evidence, which request was granted, and he said he had examined the books of the prison under his charge, and finds the accused was brought to

21 him in arrest by citizens on the eighth, ninth, or tenth of March, eighteen hundred and sixty-five, instead of the eighth, ninth, or tenth of February, eighteen hundred and sixty-five.

The prosecution here closed, and the accused having no testimony to offer and no address to make, the case was submitted to court by the judge advocate without remark.

The court was then cleared for deliberation, and having maturely considered the evidence adduced, find the accused, Cor-

poral Pryor Coleman, company "G," First Tennessee volunteer cavalry, as follows:

Charge I.	Of the specification—Guilty.
	Of the charge—Guilty.
Charge II.	Of the specification—Guilty of robbery to the amount of one dollar.
	Of the charge—Guilty.
Charge III.	Of the specification—Guilty.
	Of the charge—Guilty.
Charge IV.	Of the specification—Guilty.
	Of the charge—Guilty.

22 And the court does therefore sentence him, Pryor Coleman, corporal company "G," 1st Tennessee volunteer cavalry, two-thirds of the members of the court concurring therein, to be hung by the neck until he is dead, at such time and place as the general commanding may direct.

R. W. RATLIFF,
Col. 12th Regt. O. V. C., President G. C. M.

E. J. BROOKS,
Capt. 10th Mich. Cav., Judge Advocate G. C. M.

Court adjourned to meet at 9 o'clock A. M. the 10th of May, 1865.

KNOXVILLE, TENN., *May 10th*, 1865.

Nine o'clock A. M. court met pursuant to adjournment, and on account of the absence of Capt. E. J. Brooks, judge advocate, who was called away on business connected with the gen. court-martial at Greenville, Tenn., the court adjourned to meet at nine o'clock A. M. to-morrow, the 11th instant.

23 KNOXVILLE, TENN., *May 11th*, 1865.

Nine o'clock A. M. court met pursuant to adjournment, and on account of the continued absence of Capt. E. J. Brooks adjourned immediately to meet at 9 o'clock A. M. to-morrow, the 12th instant.

KNOXVILLE, TENN., *May 12th*, 1865.

Nine o'clock A. M. court met pursuant to adjournment, and on account of the continued absence of the judge advocate adjourned to meet at 9 o'clock A. M. the 13th inst.

HEADQUARTERS DIST. OF E. TENN.,
Knoxville, Tennessee, *May 27th*, 1865.

Approved, and respectfully forwarded to headquarters Department of the Cumberland.

GEORGE STONEMAN,
Major General U. S. Vols., Comd'g Dist. of E. Tennessee.

HEADQUARTERS DEPARTMENT OF THE CUMBERLAND,
Nashville, Tenn., *June 14th*, 1865.

The proceedings, findings, and sentence of the general
24 court-martial in the case of Corporal Pryor Coleman are approved and confirmed.

The general commanding the District of East Tennessee is hereby ordered to have the sentence awarded carried into execution at Knoxville, Tennessee, on Friday, July 21st, 1865, between the hours of 8 A. M. and 6 P. M.

GEO. H. THOMAS,
Major General U. S. A., Comd'g.

STATE OF TENNESSEE, }
Supreme Court at Knoxville: }

I, J. F. Deaderick, clerk of the supreme court of Tennessee, at Knoxville, do hereby certify that the foregoing is a full and true transcript of the record from the United States circuit court for the eastern division of Tennessee, held at Knoxville, read at the trial of the cause therein named, and now on file in my
25 office, as appears of record.

Given under my hand and the seal of said supreme court, at office in Knoxville, this 28th day of October, 1878.

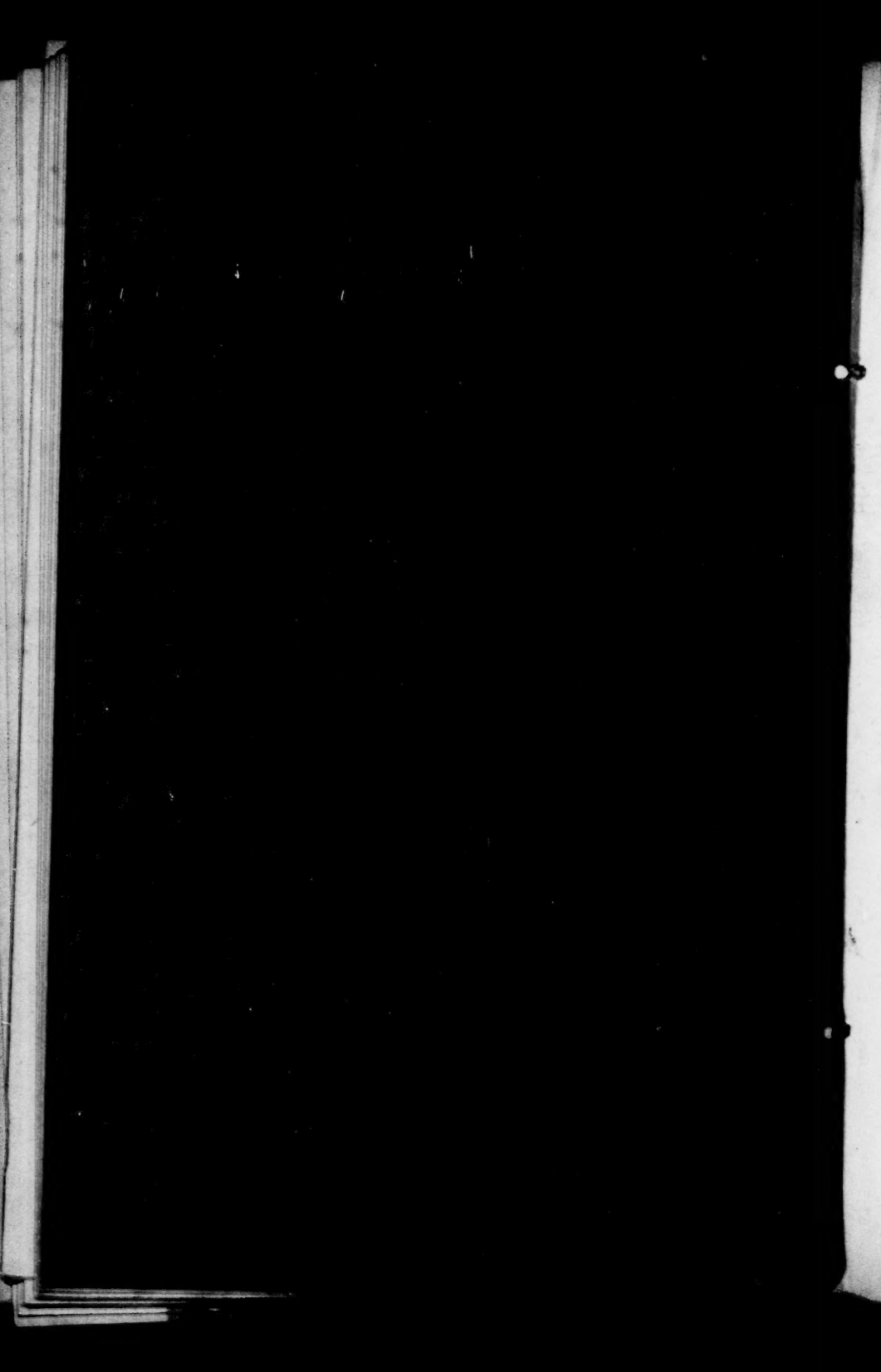
[SEAL.] J. F. DEADERICK, *Clerk.*

We agree that the foregoing transcript may be filed in the Supreme Court of the United States as a supplemental transcript in the case of Pryor Coleman, in error, *vs.* The State of Tennessee, as upon a suggestion of a diminution and a return to a certiorari, the same having been filed and used in the supreme court of Tennessee on the hearing of the cause, and there made part of the record.

Oct. 30, 1878.

L. C. HOUK,
J. B. HEISKELL.

Endorsed on the cover: Sup. Court U. S., 1878, Octo. Term. No. 344. Pryor N. Coleman, plff. in error, *vs.* The State of Tennessee. Stipulation of counsel and addition to record. Filed 1st November, 1878.



SUPREME COURT OF THE UNITED STATES.

No. 664.

PRIOR N. COLEMAN, PLINTIFF, in error,

vs.

THE STATE OF TENNESSEE.

ARGUMENT FOR PLAINTIFF IN ERROR.

BY L. C. HOUK.

The plaintiff in error, was indicted in the Criminal Court for the District of Knox county, Tennessee, on the 2d day of October, 1874, for murder in the first degree, alleged to have been committed on the 7th day of March, 1865. To this indictment he pleaded "not guilty," "former conviction"—"once in jeopardy," "no jurisdiction," etc. As will be seen from the record, he defended on the ground that the Act of Congress of March 3, 1863, had provided a special jurisdiction—Courts Martial and Military Commissions—for the trial of all offences committed by United States soldiers "in time of war, insurrection or rebellion," and having been a soldier, and in fact having been tried and convicted by a Military Commission, the State Courts had no jurisdiction to again try and punish him. The substance of the issues sought to be made in the pleadings was that the Act of Congress giving jurisdiction to the Military Courts, had taken from the State Courts the right to try and punish United States

soldiers for offences committed by them while in the service in time of actual war; and the offence in this case having been committed by the plaintiff in error, if at all, while a soldier, and when war was flagrant, he could only be punished through the means prescribed by Congress—he could only be tried and punished by the sentence of a Court Martial or Military Commission, and the United States having asserted its jurisdiction and tried him, the State of Tennessee could not again try and punish him. (See plea and amended plea, pages 5 and 7 of the record.) The State Court sustained a demurrer to this plea. (See pages 10 and 11 of the record.)

The trial proceeded and the accused was convicted of murder in the first degree, and judgment of death pronounced by the court. An appeal was taken to the Supreme Court of the State. (See pages 12, 13 and 14 of the record,) Pending this appeal the plaintiff in error sued out a writ of *habeas corpus* in the U. S. Circuit Court for the Eastern District of Tennessee. The proceedings under this writ are set out in the record and are admitted by the State's counsel to have been regular in form The writ was based on the Act of Congress of February 5, 1867, giving to the United States Circuit Courts "power to grant writs of *habeas corpus* in all cases where any person may be restrained of his or her liberty in violation of the Constitution, or of any treaty, or law of the United States." (See Revised Statutes, page 142, sec. 753) This Act, it is claimed, gave to the Circuit Court the necessary jurisdiction to issue the writ of *habeas corpus*, and to hear and determine the question whether the Act of March 3, 1863, had the effect to deprive the State of the jurisdiction and authority to try and punish the plaintiff, which it has assumed to exercise.

This last Act is incorporated into the Articles of War—Article 58, sec. 1342, page 234, Revised Satutes. And the *habeas corpus* was determined in favor of the plaintiff. The Judge presiding in the United States Circuit Court took the view that this Act was intended by Congress to fix one special national tribunal, with a special jurisdiction for the trial of United States soldiers for offences alleged against them "in time of war, insurrection or rebellion," that it repelled all other powers, and tribunals from taking jurisdiction in such cases, and punishing the

soldiers of the Union ; and that the plaintiff having been once tried as prescribed by Congress, he should be discharged from the indictment in this case. (See the decree discharging him under the *habeas corpus*, pages 22 and 23 of the record.) In the face of these proceedings, with this order for his discharge, the plaintiff in error has been kept in prison for years. The Supreme Court of Tennessee has refused to recognize it, and have proceeded with the case and pronounced the sentence of death. The records of both State and United States Courts are here for examination on writ of error to the Supreme Court of Tennessee. One of the main questions to be determined is the construction of the Act of March 3, 1863, and whether the Circuit Judge had the right to discharge the plaintiff in error because he was held in custody contrary to its provisions. Whether that Act was intended to prevent the States from interfering with the United States soldiers;and whether when Courts Martial and Military Commissions were invested with jurisdiction it repelled the State from taking jurisdiction. The Act says that: "In time of war; insurrection or rebellion, murder, assault and battery, with intent to kill, &c., &c, shall be punished by the sentence of a general Court Martial or Military Commission, when committed by persons in the military service of the United States and subject to the Articles of War; and the punishment for such offences shall never be less than those inflicted by the laws of the State, Territory or District in which they may have been committed."

Now, for what was this law enacted? What was the intention of Congress? Did its passage enlarge the family of criminal offences? Or was it the purpose of Congress to provide for the punishment of an offence already defined by and well known in the history of the common law of the land? I most respectfully, yet earnestly, insist that Congress did not intend to create any new offence by the passage of this Act. Nor can it be assumed that contrary to the intention of Congress, a new offence was created. The language of the Act does not make or define what shall be an offence. It establishes a jurisdiction.

The common law crimes of "rape," "robbery," "arson," "assault with intent to kill," "murder," &c., are recognized by the terms of the Act, and mentioned in their common law sense, as crimes against society. These crimes, that is, the principles of

common law, defining what acts shall constitute the respective offences mentioned, have existed time out of mind, and Congress, dealing with offenders in the application of these principles, simply established a national jusisdiction, through and by means of which to inflict existing penalties. The Act does not say: "*Be it enacted that, whenever any person shall take the life of another, &c., he or she shall be deemed guilty of murder, &c.*" It does not define any offence. It reaches right out, and takes hold of and refers to certain specific and known crimes and sets up a tribunal by which to determine when they have been committed, and what degree of punishment shall be inflicted. And what seems to be conclusive beyond a doubt that Congress intended to give jurisdiction alone in these cases to the United States through Military Commissions and Courts Martial, is the fact that the Act adopts the punishment prescribed by the State or Territory in which the offence may have been committed. And I again call the attention of the Court to the fact that no new offence was created by this Act That while the crimes specified are recognized as having previously existed at common law, Congress does not make, nor seek to make them, offences against the United States.

By that Act, Congress sought two objects:

First, it was intended for the protection of society against the violence of the soldiers, of whom the country was then full.

Secondly, it was intended for the protection of the soldiers of the Republic against their enemies, who might be in power, whether it was Rebels in the South or Copperheads in the North. And it was with these purposes in view that provision was made for the trial and punishment of offenders under and by the authorities of the United States; and that too, as we shall see, to the exclusion of all other jurisdictions. The whole tenor of judicial opinion, since the war, maintains the right of Congress to pass this law, conferring jurisdiction of the offences named on Courts Martial and Military Commissions. And nowhere has the principle been more boldly asserted than by the Supreme Court of Tennessee. This is the logical and legal result of the doctrine of belligerent rights, as expounded by that able and fearless tribunal. Under every principle of International Law and rights appertaining to a conquering belligerent, Congress had the un-

doubted power under the Constitution, to create and invest this new jurisdiction in Courts Martial and Military Commissions, as prescribed by the Act of March 3, 1863. If Congress had the power to provide by law for the reconstruction of the rebellious State Governments of the South after the rebellion was ended—if it could invest the local authorities in the rebellious States those authorities themselves being the creatures of Congress—with the attributes of Government, executive, legislative and judicial, by the reconstruction laws, of which there has been such a thorough discussion, when there was no war—when the rebellion had been subdued—it could most certainly invest Courts Martial and Military Commissions with authority of the kind conferred by the Act of March 3, 1863, at a time when war was flagrant and the State Governments, afterwards restored, were then overthrown.

And it is respectfully insisted that this Act substituted Military Commissions and Courts Martial to the judicial powers, for the time being, and in the instances mentioned, formerly existing in and exercised over the rebellious territory by the subverted State Governments of the South. This was one of the principal designs of Congress in the passage of the law.

I take the ground that, under the Constitution and laws of the United States, and the principles that must be applied in their interpretation and application, the State of Tennessee neither has nor can have, jurisdiction to punish a soldier for an offence committed by him while in the military service of the United States, and more especially when no State Government existed in Tennessee at the time the offence was committed. Where were the Constitution and Government of Tennessee, when this crime is charged to have been committed? Was there such a Constitution? Yes; the letter existed, but it was dead. Both the spirit and protective power of the Constitution were gone.

The membership of the State Government—the officers who had sworn to protect, maintain and enforce the principles of that Constitution—had disbanded, deserted their posts of duty and taken up arms to resist the power that had created the Constitution and Government of the State. These agents were seeking to set up a new Government, under a new Constitution, and acting in opposition to and in defiance of the National and supreme

authority of this country. I speak here, may it please the Court, of the Constitution and Government of Tennessee, in that distinctive sense in which these terms are used when it is sought to discriminate between the Constitution and those who are selected to administer it; but in whatever sense we may employ these words, the principal fact remains patent, that when Congress provided for the trial and punishment of those who might commit the Common Law offences mentioned in the Act under consideration, it was no more intended, nor will the principles of the Constitution, when interpretted by the Common Law, imply that it was intended to create these crimes against the United States, any more than that it was intended to create these criminal acts as distinctive offences against the United States, when the State Governments of the South were invested with power under the reconstruction acts to take jurisdiction and punish those who might commit crimes within their territorial limits.

Under the Act of March 3, 1863, the prescribed military courts had as exclusive jurisdiction of the Common Law offences it mentions, as the State Courts now have jurisdiction of like offences committed by citizens under the Reconstruction Acts of Congress. As I have said, murder was a crime at Common Law. It has come down to us from the distant ages of the past, with a well-defined character and legal existence, and neither the Acts of Congress nor of the State Legislature make it murder.

The At of 1863 provides for a necessity. The authority of the rebellious States, to whom the power to punish for crime had been impliedly delegated by their admission into the Union, was then overthrown and powerless. The State Governments had been wholly subverted, and Congress provided, by this Act, that the military arm of the national and paramount Government should protect society by the punishment of offenders.

Whatever may be found in the statutes of the States, or of the United States, bearing on this subject, will only confirm what I have argued in regard to the existence and character of murder at Common Law. and the purposes for and intentions with which the Act of March 3, 1863, was passed. The State of Tennessee like the United States, has only provided for the punishment of offenders for the commission of offences against society. The State of Tennessee, like the United States, recognizes

murder as it existed at Common Law, divides into two kinds, and provides for the trial and punishment of those who commit the offence. And society being wholly dependent on the military for protection in the time of war, Congress very wisely invested that arm of the Government with a species of judicial power by which to punish criminals and protect society. So, under our system of Government, society is wholly dependent on the civil authorities of the State for protection in time of peace; and the State is then, unless expressly otherwise provided, invested with full power to punish offenders for the commission of murder and other crimes against society. The object of the penal code is the protection of society. It is this that moves the body politic to act from the supreme sovereign down to the municipal board, in devising means for the prevention of crime and the punishment of criminals.

And it was this that influenced Congress to create a new jurisdiction for the trial and punishment of the United States soldier in time of war. The Act of March 3, 1863, sprang into existence under similar circumstances to the Act of March 3, 1825, which was "*more effectually to provide for the punishment of certain crimes against the United States.*" Mr. Everett, in his Biography of Mr. Webster, speaking of the crimes unprovided for in 1825, says: "Many crimes committed on shipboard, beyond the jurisdiction of any State, or in places within the Union excepted from State jurisdiction, were unprovided for," and that this subject "was at length taken up by Mr. Webster," and a code of laws enacted to meet the emergency. And in regard to the creation of new offences Mr. Everett says: "It was the effect of Mr. Webster's Act, not to create new offences, but to bring within the reach of a proper tribunal crimes recognized as such by all the codes of law, but which had hitherto escaped with impunity between separate jurisdictions." Thus it will be seen that the distinction I have sought to make was clearly recognized, and that the creation of the new jurisdiction for the trial of soldiers under the Act of March 3, 1863, was the assertion of no new right, but the re-application of an old legislative principle.

It was the protection of society, the purpose to do so, that led Congress to pass the law providing for the trial and punishment of soldiers in the service of the United States. And it is respect-

fully insisted that the State Courts would have no jurisdiction to deal with and punish the plaintiff, even though he had never been put upon his trial before a military court for the alleged offence. Under the Act of March 3, 1863, the United States took to its own tribunal, therein provided, the exclusive jurisdiction for the trial and punishment of offenders in the cases mentioned, and by explicit implication excluded all interference by any other authority whatever. And the United States was the only authority whatever of a legitimate character over the territory of Tennessee at the time this offence is alleged to have been committed.

Hence, if no prosecution had have been instituted against the plaintiff in error, and no trial had have been had under and by the authority of the United States, still the State would not be permitted, under the facts of this case, to proceed against him.

The case now at Bar, however, is much stronger than the emergency embraced in the provisions of the Act of Congress giving jurisdiction to the Courts Martial and Military Commissions of the United States, which tribunals, as I have insisted, were substituted in lieu of the subverted authorities of the rebellious States. This, at all events, was the practical result, if not by operation of law, by application of existing circumstances.

Previous to this Act, it would have been the duty of the military commander to have arrested the plaintiff on complaint and sufficient cause shown, and turned him over to the civil authorities of the State to have been proceeded against for the alleged crime. But seeing the evils likely to befall the soldiery, to say nothing of the general peril to the army, Congress very well knew that it would be most injudicious—nay, the extreme of folly—to take an accused Federal soldier and turn him over to be tried for an alleged offence against Southern society, by the courts and juries then to be had in Tennessee and elsewhere in the South. Hence Military Commissions and Courts Martial were provided in the room and stead, and clothed with the judicial authority previously exercised by the State Courts over these offences. And if Congress had have intended the State Courts to continue to exercise jurisdiction in these cases why did it repeal the law directing all criminals to be turned over to the civil authorities?

And here I would ask: What kind of justice would the Courts of Tennessee have administered to Union soldiers in the days that the State was an assumed member of the Southern Confederacy? This Act, creating a new and *unprejudiced* jurisdiction for the trial of such cases, was intended, by the Congress that passed it, to prevent the very thing that we now see sought to be accomplished in the trial and punishment of the accused. Such is the character of this case. Indeed, this act of Congress is so sweeping in its provisions, and the purposes of its enactment are so plain that even though Tennessee had have been, at the time of the alleged offence, in perfect loyal harmonious legal relations with the Union, the State could not have taken jurisdiction, as attempted.

How much stronger, then, must be the argument against the now reconstructed and new State Government, reaching back and asserting jurisdiction over a supposed offence alleged to have been committed at a time when no such a State Government was in existence? And especially is this argument of great force, when it is remembered that the State Government now seeking to get back and take jurisdiction of offences, the trial and punishment of which are committed by this Act of Congress to the exclusive jurisdiction of military courts, which were substituted, as I have attempted to show, in lieu of the State Courts; and in order to intensify the absurdity of this assumed jurisdiction by the State Courts, it must be contended by those who would maintain it, that the military courts could not be clothed with the powers sought to be conferred by the Act of Congress; and this, too, when all the legal existence possessed by the State, and the only jurisdiction of its courts, are all and singular, dependent on the action of the same Congress!

I take the position, fortified as it is by the reasons already assigned, that the State has no right to proceed against a soldier for any offence embraced in the Act of 1863, and particularly an offence alleged to have been committed at the time laid in the indictment against the plaintiff.

Nay, I go one step further, and urge, with emphasis, that the action of the State authorities in this case, though springing from laudable motives, is nevertheless, under the circumstances, a species of impertinent interference with the jurisdiction of the

United States that ought not to be tolerated, although backed by the ancient but exploded theory of "States' rights," which, in this instance, means "the right" to nullify a plain and humane law of Congress.

On these general principles I might rest this whole case, but as assigned counsel in this case, in the interest of human life, and the discharge of professional duty, I desire to present one or two other reasons for the reversal of this case, and the discharge of the accused.

The records of the War Department and of the State Court not only show the plaintiff to have been a soldier at the time the murder is charged to have been committed, and therefore not within the jurisdiction of the State Court, but that he has already been tried, as prescribed by law, by the authorities of the United States for this identical offence.

This being a fact both admitted and proved, it is respectfully and earnestly insisted that he was put upon his trial in the State Court, in direct violation of the Fifth Article of Amendment to the Constitution of the United States. That instrument says: "Nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb." The plaintiff has been "in jeopardy" once: and indeed, he may be said to never have been out 'of jeopardy" by authority of the United States since he was first arrested, because here, in this record from the War Department, stands the judgment of a competent court condemning him to be hanged.

In this record stands a judgment unrevoked and unappealed from, subject to have been enforced by the United States if the authorities had so willed at the time; and the failure to carry the sentence into effect must be taken as an abandonment of the purpose to execute the plaintiff by that "sovereignty."

The United States first obtained jurisdiction, and disposed of the case, and yet the State of Tennessee now steps in and proposes to take him and execute him without consulting the United States on the subject; and that, too, while he virtually remains a prisoner; at least, in the constructive custody of the United States. This amounts to a practical invasion of the United States' prisons, and there seizing and executing a United States prisoner by State authority.

This presents the question of "States' rights" in something like a new dress, It is, to say the least, a bold movement and full of peril to the rights of the soldiers of the Republic. It involves much more than the life of the plaintiff. It involves the fundamental powers of the National Government.

Is not the United States Government to be the judge of the propriety or impropriety of its own course of conduct? And if it shall condone with its criminals, who and what power is to call its acts in question? And shall the solemn proceedings of a legally-constituted tribunal of the United States be declared a farce by, or be dependent upon, an inferior department of the State system of judicature for their legal validity? Shall such proceedings be annulled by a State Court, and the United States stand by and refuse to stay the wrong through the action of its Judiciary?

Shall a citizen of the United States, though murderer he may possibly be, who is answerable to the United States, and who has been compelled to answer according to the forms of proceeding of the United States under the law applicable to the facts of his case, and who has been discharged from custody under this indictment by the United States Circuit Court, be thus seized upon a pretext of "*States' riyhts*," of "*the Sovereignty of the State*," and subjected to a second trial and punishment' for the same offence; and that, too, at the hands of an authority that can only act in the premises by the exercise of a gross usurpation! Suppose the plaintiff had have been sentenced to the penitentiary, and have served out the period of his punishment, could he now be taken into custody and be hanged by the State? I most seriously insist that, legally, he could not. And whatever may have been the adjudications of courts in the past under the States' rights notions that prevailed, at one time, in regard to *one act* constituting an offence against *two Sovereignties*, still I apprehend that there is a clear distinction found in the laws of the United States and of the States respectively by reason of both the Acts of Congress and the Acts of the State Legislatures, having defined what should constitute offences against the one Government and the other. For instance in the case of counterfeiting, the Acts of Congress define what it is, make it a crime, and provide for its punish-

ment. The State Legislatures do the same thing, and hence *one act* may be an offence against both the United States and the State of Tennessee. Not so, however, under the Act of 1863. It is not made an offence against the United States. The means of punishment are provided for the common law offence.

The school of thinkers to whom I have referred, talk of *"States' rights"* and *"two Sovereignties"* with an air of knowledge that I confess to constitute an enigma to my frail understanding. And I cannot understand but that to permit the plaintiff to be taken and executed by the State of Tennessee would be saying to the brave sons of the Republic, who in times of public danger and national peril are always ready to volunteer, that it may be, as soon as the revolution is suppressed and their services no longer needed, they will be handed over to the tender mercies of the enemy whom they are expected to face in the field, to be tried by them for any offence that may be alleged against them at the close of the war in which they are invited to engage! Would this be just? Are not the consequences involved high above any question of individual punishment? Suppose a demand like the present had have been made to any one of our Generals during the war, or to the President, or to this Honorable Court? Would the plaintiff have been turned over to the unfriendly courts of the rebellious States, or to the courts inspired by the Knights of the Golden Circle in the North? Certainly not. And to prevent just such proceedings and results, Congress passed the Act giving jurisdiction of this and other offences to military commissions and Courts Martial of the United States. Has a soldier lost something by being discharged? Will the United States protect him while the war lasts and then permit him to be pursued to the gallows?

Does such a policy comport with the duties of a proud and mighty sovereign in its dealings, it may be, with even an unworthy subject?

And for the nation to give up one of its soldiers to be punished in one case under circumstances and by the application of principles which, if applied in all cases of like circumstances and involving similar principles, it would lead to injustice and wrong, as well as tend to subvert and destroy those reciprocal relations that should exist between the Government and those who are ex-

pected to serve and have served it in time of war and public danger. I say, may it please the Honorable Court, that for the nation to thus act towards its citizens, and especially its discharged soldiers, would lay the ground-work for the disobedience of its subjects and its consequent overthrow and ruin, by inviting them to withhold from it their support in times of public danger.

It seems to me that every principle of public policy, and the doctrine of self preservation which the Government should maintain, forbid the construction of the law as contended for by the counsel for the State in this case. The war has developed latent defects and brought into requisition the hidden genius of the Government and Constitution under which we live, and I insist that the latter must provide against the weakness of the former, and the Courts should give no countenance to those tendencies that so clearly point to anarchy, as do the positions assumed against the accused in this case. But suppose I am mistaken in the purposes of Congress, and contend for an erroneous construction of the Act of March 3, 1863, the plaintiff in errrr, is still entitled to his discharge by reason of the *habeas corpus* proceedings in the Circuit Court.

The Act of February 5, 1867, fully authorized the Circuit Judge to issue the writ. That Act gave him jurisdiction of the subject. He pronounced his judgment of discharge, from which there was no appeal—the law authorized no appeal.

Congress intended to give to the United States Circuit Courts absolute and plenary power in such cases, and whether the Judge was correct in his construction of the law or not, when he adjudged the accused should be discharged, that judgment was final, and conclusive of the case.

Sections 762, 764 and 765 of the Revised Statutes show that the action of the Circuit Judge cannot be appealed from in cases like this; and sec. 766 makes his judgment final.

The latter section declares that, "*after final judgment of discharge, any proceeding against the person so imprisoned or confined or restrained of his liberty in any State Court, or by or under the authority of any State, for any matter so heard and determined * * shall be deemed null and void.*" This statute has perhaps but seldom been before the Courts for construction, but in *ex parte* Seymour, 1 Ben., 348, it was decided that "if a person be

held by a State Court, in violation of any law of the United States, a Federal Court has power to release him, on *habeas corpus* under this Act." (See foot note 2d Brightly, 213.)

Whenever the power was vested in the United States Circuit Courts to release a person held in violation of the laws of the United States, that power carried with it the right to judge when such person was so held, and whenever the Court pronounced judgment discharging the plaintiff there being no appeal from its decision, the case was ended, and the action of the Supreme Court of Tennessee in proceeding with the case and pronouncing judgment of death, was in direct conflict with the law of Congress already cited, and of course "null and void."

In adition to the authorities cited, I rely upon the principles of the cases of Rice vs. the United States 4. Wheaton 246, and Cross vs. Harrison 16. Howard 164. And now I close this case with the statement that I feel confident this Court will not permit the doctrine of " States Rights " to undermine the fabric of the Federal Union.

L. C. HOUK. Counsel.

Supreme Court of the United States.

No. 344.

PRIOR N. COLEMAN v. THE STATE.

There are a number of questions, which, to present in their natural order, would be as follows:

1. Did the act of 1863, declaring *punishable* by court-martial murder committed by a soldier *in time of war*, assume to punish an offense against a State or against State laws; or did it prescribe a punishment for it as a breach of the Articles of War?

If the latter, it is not the *offense* which we seek to punish.

2. Did it assume to exclude the right of a State to punish the same act as an offense against State laws?

If not, it is not a violation of that statute for the State to punish.

3. Has the government of the United States the right to say, of an offense or act not committed in the execution of her own laws, nor by her own agents in her behalf, that a State shall not execute her own laws upon the offender?

4. If she has the right, while she needs his service, to protect and retain him for the purpose of obtaining that service,—her purpose,—does her right continue when the purpose of the United States is answered, and the only purpose for which interference is necessary is the criminal's purpose—to escape punishment?

If she has not the right, or has not exercised it, then the act of Congress is no bar, nor is any proceeding under it.

5. Is a man twice in jeopardy for the same *offense* when

one act is an offense against two laws, of two different sovereignties, and he is tried once for each?

If not, a punishment for one is no bar to a punishment for the other.

6. If the United States has punished a man for an offense against her laws, is it a violation of the Constitution, or any law of the United States, for a State to punish the same act as an offense against her laws?

And this goes to the jurisdiction of Judge Trigg of the Habeas Corpus Case.

7. Does the Constitution of the United States, forbidding to put a man twice in jeopardy, apply to the United States alone, or operate as a prohibition on States also?

If the former, then the putting in jeopardy by the State may violate the State Constitution, but not that of the United States.

8. If the United States, as a belligerent, assumes to execute State laws as conqueror, occupying enemies' territory, does it then become a violation of the Constitution or laws of the United States for the State to execute her own laws over again, or is that purely a State question?

9. This is to be considered, 1st, in view of the act as that of a conqueror simply; 2d, in view of the Constitution and laws of the United States. And these are matters in no way mixed, but are essentially separate considerations.

If the United States was not executing State laws, but her own, this question would of course be of no effect upon the case.

10. Did the state of civil war in Tennessee so far subvert the government and obliterate the State, that no offense could be committed against her dignity or her statutes; or did it merely suspend the power to execute her laws—in full force all the time—until the necessary organization should be restored?

11. Is not that purely a question of State law, for the State courts do determine—finally decide?

12. Is a party ever in jeopardy who has been convicted, where the court trying him has had its power taken away by limitation, and so the execution of the sentence has been prevented?

The question of Mr. Justice Miller, as I stated in argument, disturbed my confidence in the correctness of the ninth proposition. Upon reflection, I do not see that it materially shakes even that position. If the United States, as an act of war, undertook to execute the law of Tennessee under the powers of a belligerent, that was not under any constitutional provision, and it seems to me cannot be affected by any question about the effect of a record. However this may be, it affects no other single proposition but the ninth.

It will be observed, that either the tenth or eleventh of these propositions being decided for the State, the decision of any one of the remaining questions for the State will affirm the judgment of the State court.

J. B. HEISKELL,
Of Counsel for Defendant in Error.

Correct Citations on p 6 - note as follows

Fox v Ohio 5 How 432
U S v Marigold 9 How 560
Moore v Illinois 14 How 13
U S v Cruikshank 92 U S. 536

IN THE SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1878.

PRIOR N. COLEMAN IN ERROR,

v.

THE STATE OF TENNESSEE.

BRIEF AND ARGUMENT FOR THE STATE. J. B. HEISKELL, OF COUNSEL.

The plaintiff in error was indicted in the Criminal Court of Knox county, Tennessee, on the 2d of October, 1874, for the murder of Mourning Ann Bell, which occurred more than nine years before on the 7th of March, 1865. The atrocious circumstances of the murder of this young woman, committed by the defendant and one Chambless in an attempt to rob the aged father of deceased, and while she was endeavoring to shield him from the attack, will be found in the record on page 16.

He was tried on the 2d of October, 1875, and found guilty of murder in the first degree, and sentenced to be hung on the 19th of November 1875, From this judgment he appealed to the Supreme Court of the State.

Here two controling questions were decided. Before the trial in the Court below the def't had pleaded in bar of the proceeding that he was tried by Court Martial, being then a soldier in the service of the U. S., and that he was by that Court Martial condemned to be hung for the murder. He avers that the sen-

tence was approved by Maj. Gen. George A. Thomas, but not that it was ever remitted or that it stands unreversed.

This plea was held bad by the Circuit Court. Upon the trial on the plea of not guilty, no evidence was offered for the def't. The first question was, was this a good plea.

After the trial below and pending the appeal, the record shows that a copy of a judgment was filed in the Supreme Court purporting to have been rendered on the 17th of March, 1876, by C. F. Trigg, District Judge of the U. S Court, sitting in the Circuit Court at Knoxville, ordering the discharge of the prisoner on *habeas corpus*.

The supplemental record filed, shows the matter upon which this order was made, to have been the same, as the matter of the plea of former conviction.

The second question is, what is the effect of this action of the Circuit Court?

The case is one of a series in which I have striven in vain for the last eight years against the interference of the Courts of the U. S., interposed with the effect to give immunity to murders the most atrocious and unprovoked under, as I conceive, a misapprehension of the law and of their duty. It assumes from this fact an importance beyond even the immediate consequence of this case.

I am indebted for this opportunity to the fortuitous circumstance shadowed in the order of Judge Trigg, that Coleman the plaintiff in error was in custody also upon an independent charge of felony, from which he was not discharged upon the order of Judge Trigg. The opinion of Judge Turney, therefore inaccurately states that he was rearrested. He remained in custody and being within the power of the Court his appeal was determined. In the other cases the release being absolute and no appeal lying, the prisoner could not be tried and there was no means of bringing the questions involved to this Court.

The first question in this case is simply whether the Constitution of the United States, 5th Amendment, protects a person from the acts of States or whether it operates alone upon the Government of the United States as a restriction upon its powers If the former then the prisoner is not held or prosecuted contrary to the Constitution of the United States, for

that act cannot be contrary to it which it does not prohibit to the person doing the act. It would be in contravention of that amendment for the United States to put the person a second time in jeopardy because the clause is operative against them; but if it be a prohibition in which States are not included it is not in contravention of the prohibition for the States to do it.

If the prohibition operates on the State then a prisoner put upon his trial on a second accusation after being once tried for an offence involving life or limb by a State Court, can at once appeal to the Courts of the United States. Such a construction cannot for a moment be tolerated and no such consequence can follow from the well established view of the Constitution. Indeed the proposition is a self evident one in the construction of the Constitution.

If this be the true construction then it does not matter whether this case were one in which the State Courts were endeavoring to oppress an individual or were in the simple fact of administering acknowledged justice, this Court would have no jurisdiction to interfere with their doings. It would stand on the footing of every other State case now pending in the State of Tennessee not involving any Federal question. This Court does not assume any general superintendence of the State Courts. Congress has given them no such power, and they, if such power were declared by act of Congress would repudiate the grant as in contravention of the Constitution and void.

Let me be fully understood upon this point. This 5th amendment either applies to States as a prohibition, or it applies exclusively to the United States. If it applies to States at all, it applies to them without reference to any act or thing done by the Federal Government, its courts or its officers, for its provisions are general, and in no way discriminate. If it applies to States at all, it applies to every case where a def't is raising the question of once in jeopardy To Mahala's case, 10 Yer , 532, 542 ; Chaffin. case,2 Swan, 493; Davis case, 3, Col. 78, to Timms's case Col. 143; to Clenny's case, 1 Head., 271 ; Major's case, 4 Sneed, 597 ; Jones's case, 2 Swan, 404, to Epps's case, 4 Sneed, 552: to Hodge's case 5, Col. 11, to Long's case, 1 Swan, 35, to Ramsey's case, 5 Sneed 652.

If it does not apply to every case of auterfois convict or acquitt

or former jeopardy then it applies to none at all arising in a a State under this 5th Amendment.

This being the proper construction; the act complained of here if prohibited at all is in contravention only of the article of the Constitution of Tennesssee, which contains the same clause, and it thus becomes a matter of purely State jurisdiction.

It will be now seen that the question is two-fold. 1st, whether acquittal or conviction or jeopardy in one jurisdiction is a bar in the other; 2nd, assuming that it is so, the question is, which Court has jurisdiction to determine--finally decide—that plea when made.

I now go to the consideration of the question upon authority, which establishes the point, not only that this 5th Amendment has the construction which confines it to the United States Government in its operation, but that universally restrictions in the Constitution of the United States, have no application to States unless they are mentioned.

Mr. Cooley states the rule in the general terms, that limitations imposed by the Constitution are in all cases to be understood as limitations on the powers of the United States only, unless the States are expressly mentioned. Cooley on Cons. Lim., p. 19; Citing, Barron vs. of City of Balt., 7 Peters, 243, (This is cited by Judge Hawkins in State vs. Rankin, 4 Cold. 153.) Livingston vs. Moore, 5 Pet. 557, in general terms: Fox vs State of Ohio, 5 How· 432; Smith vs Maryland, 18 How. 71; Puryear vs. Comm'wl, 5 Wal. 475; (a case raising the question of the prohibition of cruel and unusual punishments; a part of the same amendment and on the same footing of the jeopardy clause in every principle and consideration.) Bonaparte vs. Camden & Amboy R. R. Co., Baldw. 220; James vs Comm'lth, 12 Serg. & Rawle, 221, as to cruel and unusual punishment. Barker vs. People, 3 Cow. 686, on the cruel punishment clause, Cold. vs. Eves, 12 Conn. 243, on jury trial; Jane vs. Com'l, 3 Met. (Ky.) 18; Lincoln vs. Smith, 27, Vt. 336; Matter of Smith, 10, Wend. 449, on the clause providing jury trial, State vs. Barnett. 3 Kansas 250; Reed vs. Rice, 2; J. J. Marsh. Withers vs Buckley, 20 How. 89–90, a most sweeping decision. See especially C. J. Marshall's opinion in the case of Barron vs. City of Baltimore, where the whole scope of the amendment is discussed with admirable force and clearness.

Now let us read this amendment as this construction makes it read. "Nor shall any person be subject for the same offence to be, *by the Government of the United States*, twice put in jeopardy of life or limb."

Does a State hold a man in violation of that prohibition, if she again puts him in jeopardy? She violates a Constitutional provision, but it is that in her own Constitution, not that in the U. S. Constitution.

Grant of Power to U. S. does not exclude State, Delafield vs. State of In. 2 Hill, 159; Federalist No. 82; Teal vs. Felton 1 Comst. 537.

State Courts have jurisdiction of controversies where State is a party, 2 Hill, 159; Burrell vs. Jewett, 2 Paige, 134. Gibson vs. Woodworth, 8 Paige, 132. People vs. Shff. of W. 1 Park. Cr., 659; S. C. 10 N. Y. Legal Obs. 298. Garr vs. Bright, 1 Barb., 157.

State laws for organizing militia, &c., valid except so far as they conflict with the laws of U. S. Houston vs. Moore, 5 Wheat. 1, 51.

I desire in the argument of this case to separate into its constituent elements the combined questions which are brought against this prosecution. And in doing so wish the Court to observe the distinction between analyzing what gains no legitimate force from aggregation, and what properly is dependant upon accumulation for its cogency. For instance, an argument deducing a fact from circumstances, is dependant upon the number and connection of the facts for its strength, while principles of law only can be tried by segregating what is mixed into its constituent elements and trying each by itself. It is the business of the workman to make the tough and beautiful bronze from the tin and copper, of chemist to try each element and separate them again into the constituents. He who treats the compound as a pure metal is misled and deceived. The analyist alone can declare that it is but an alloy.

The argument in this case has no tangible element of unfairness, no varnish of dishonest seeming, yet it only requires to be taken to pieces to see to see that it is not sound. The first of the positions we shall examine is that in regard to the *offence*. It starts out with the idea that the murder is the *offence*. The

Constitution of the United States and of the State prohibit putting a man twice in jeopardy for the same *offence*. Now offence is a word that has a clear and distinct meaning, and this clear and distinct meaning is the first subject of the attack. The offence in this case is *the murder*, and the murder is the same murder. Where is there any fallacy or error here? What is an offence. It is simply an act of *offending*, not the act, but the act in its relation to the law, of which it is a breach. An act may offend the law of the family and be offence against the parent, it may be an offence against the rules of a school, it may be an offence against the rules of a corporation, of a State and of a Federal Government. It is one act, it is not one affending. In addition to all these it may be an offence against the divine law.* Can it be that the divine law will sanction the injustice of punishing what the State has already punished! Allow me to say with due reverence that it must be that the Almighty has no respect for our favorite dogma of government, or that he regards the distinction of an offence against the State and a sin against Him, or two offences in one act.

Take a case of counterfeiting. The United States punishes this act in a citizen of Tennessee, as an offence likely to injure the current coin all over the country, to bring her mints into disrepute, and her currency into disfavor at home and abroad. The State of Tennessse punishes the same as likely to prejudice the honest citizen, to protect whom is her duty, in his dealings with his neighbor, rather than with a view to the general policy of the whole United States. Just as she punishes the circulator of spurious paper from other States, not to protect those foreign banks but to protect the home citizen.† Can the President of the United States pardon the man who offends against our State law of counterfeiting. Is he vested with power to say that Tennessee shall not punish this offence against her laws; because it is also a breach of the U. S. laws. Suppose the State in whose

* See the same definition cited Cold. 155, by Judge Grier See Chief Justice Taney in U. S. vs. Amy. 14 Md. 149, note 152, cited in 1 Bishop, note to 837.

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territory the bank is situated shall say if any man shall forge paper on my banks I will imprison him for that offence and I will demand him from the State wherever he may be for that purpose.* Would that enable that State to pardon the offence against the State of Tennessee when committed here. Why not, here are two offences in one act. In each case the act is one the offending is against two laws.

If the two constitutions said no man shall be punished twice for the same act, it would have been the case which the counsel presents. But when it leaves out the *act* and deals with the *offence*, what does it mean, what it says [illegible] what it refuses to say? *Offence* or *act?* A man stands States. In one he shoots down an uno other. Is that an offence against one Sta lees act is committed in one, the death a izon of the other. Suppose both have pr the particular act; one of shooting into the act of shooting into its own lines. Is one law broken or two?

The Fenians make a raid into Canada in violation of the neutrality laws of the United States, and invade the soil of that country; is this one act, one offence? It is the breach of two laws and the party is amenable to punishment from both Governments.† It is not a question whether both will exercise the right, or the party will escape both. But are these single offences or double? One offence in one act, or two offences in one act? We have a case at home in Tennessee. It may be an offence to sell liquors, at certain hours of the night, against a corporation ordinance, and no State law broken by that. Suppose at the same time it is without license and so against the State law. Is it any less against the corporation law now than when it was in obedience to the State law? Certainly not. It is only the offence against two laws now when before it was one. A man is an operative on the railroad One of the company's rules is that he shall keep a lookout a head. He runs over a man by carelessness. The railroad discharges him. This is a punishment. What for? An offence against the State

*See Adams vs, the People, 1 Cush. 173, 3 Den. 190.

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law? No, the offence against the company. Can a State punish him further? If so he is twice punished for one act. If this is against any principle of abstract justice, the principles of our Constitutions, why do it? Does any stickle at this? These companies have an army of operatives, with full power to make rules and regulations for the government of their forces, They make rules which make an act an offence against them, which is also an offence against the State. Each can punish and no one dreams of it being an injustice against natural right. But the United States has the same power to regulate her armies and her navies, "*to make rules for the government and regulation of the land and naval forces.*" Not to enforce State laws, not to enforce corporation ordinances, not to compel obedience to railroad regulations as such, but to govern the army by rule breaches of which rules though they might offend against God and man, State and corporation, could only be punished *as breaches of military discipline* and offences against that alone which the Constitution gives the power over. They have no power to punish the offence against the State, but against army regulations. It may be the same punishment or more or less but it is not for the same offence, whether it be described in the same terms or broader or narrower. It may be that the two would not exercise the power to punish. The question now is have they the power.*

When we have got so far I think we may set down satisfied that the doctrine of Rankin against the State† is sound law, and that one act may without a violation of the Constitution be punished as two offences, against two different law makers. The Constitution is the only question now. The *propriety of doing the thing* has nothing to do with the power of doing it.

The question next presented is whether the Act of 1863, c 75, s 30, Stat. at large, vol. 12, p. 736, for the regulation of the army, which directs that certain officers shall be punished by court martial, excludes the right of States to punish for the same offences against their own laws, or for offences somewhat similar.

The United States has, by the Constitution, the right "to make rules for the government of the land and naval forces."

* See what is said by Judge Daniels, quoted 4 Cold., 15; which is altogether as to the administration of the law, not its force and effect.

† 4 Cold., 154.

But they have no right to punish an offence against the State of Tennessee. It may be true that this right given to them does give them the power to exclude the jurisdiction of the State to try the soldier while he is in the military service, but it was necessary to confer the power upon the United States to enable her to punish the soldier at all, without it she could not have tried any man by court martial, or have tried any person for a military offence, but would have to depend on State laws to reach him.* The States, in conferring this power, necessarily yielded up the power during the soldier's time of service to take him from the United States, except by consent of that Government. But they do not necessarily yield up any more than that authority while the United States used or had need of him.

*It was certainly so regarded. Whether this is accurate or not, if anything could be derived by implication, it could not extend beyond the necessities of the occasion to punish, not to exclude the State from so doing.

In the construction of all instruments the purpose and objects of the contracting parties are to be considered. In the construction of this instrument, if the exclusive control of the soldier, while in the service, is all that is needed for the purpose of the United States, and it is not necessary for her to connive at his murders, rapes and robberies, longer than she has use for him, then, the right construction would be that the right to regulate the army did not involve the right to prohibit the States from protecting themselves from the acts of their own citizens, committed while soldiers. In this view the courts ought to hold that the Constitution of the United States did not confer the power to exclude the jurisdiction of the State to punish offences except so long as they kept possession and control of the soldier,

But, however, this question might be held if the Government of the United States had clearly and beyond question declared its intention to exercise the exclusive right, it is of the utmost consequence when Congress has merely declared affirmatively that certain offences against the discipline of the army *shall be punishable* by court martial. Now it is contended that this provision, so necessary to the good government of the army, and needing all the aid it can receive from the concurrent sanctions of the State law—not only means to claim jurisdiction affirmed by the enactment—but to negative the other,

which it does not in terms negative. In other words, where the necessity exists only to confer power on the army, and none to restrict the power of States which it is doubtful if the States ever parted with—there the courts are to imply a prohibition.

Blackstone says, "at such times, (when a nation is engaged in war) more rigorous methods were put in use for the raising of armies, and the due regulation and discipline of the soldiery, which are to be looked upon only as temporory excrescences bred out of the distemper of the State." This court quotes with approval in Milligan's case 4, Wal. 128, this sentiment from the debate in Parliament, on the trial of John Smith, at Demarara. "When the laws can act every other mode of punishing supposed crimes is itself an enormous crime."

Now, are these more rigorous methods to have a favorable or a strict construction. When the temporary distemper is passed, and the peace remedies, trial by jury and by the course of the common law are practicable, can the courts hold that the power to try by the civil law is precluded by a law which in terms merely confers the power to use the *rigorous method.* Observe, *shall be punishable* merely means *may be punished.* Suppose an English statute declares that murder committed in time of war by a soldier shall be punishable by court martial. Would any English court with the spirit of English freedom in its breast hesitate for a moment to declare that the soldier might be tried by the ordinary peace methods if the military department chose to permit it to be done. In other words, to hold that this more rigorous method was not the exclusive method. Observe again, the law is that in time of peace the *regular method* is the only one, one favored by the United States law. In times of war only it assumes to use the *more rigorous method.* It assumes to do it by permissive words and not by exclusive words, that is not by words necessarily exclusive. Does it not do as an English parliament would, not as a favored mode but as a temporary excrescence?

But the temporary necessity is accompanied by temporary organizations, and only during their continuance *can* the more rigorous methods be enforced. Crimes only discovered after the armies are disbanded, must on this construction be condoned, however atrocious, because the means to punish in this more

rigorous and exceptional method have passed away. Now, the punishment of offences has from the earliest times been regarded as one of the first duties of a State. Mr. Herbert Spencer narrows down the duties of the State to the punishing of crimes and the enforcing of contracts. Shall we adopt a construction of a law not necessarily requiring such a construction, which shall in all future wars leave the highest offences committed during the war against private citizens and not under color of military authority (for the law applies to the soldier and not to the act done as such) beyond the power from the time peace is declared or the armies disbanded, of any arm of the Government, State or Federal. Why shall we adopt such a construction? It is monstrous. Suppose, by a failure to adjust the border difficulties with Mexico, we were plunged into a war with that Republic. A man has only to enlist one day, commit murder the next, and when the army is gone and too busy in the field to try him, plead their exclusive jurisdiction in bar of the action of the State tribunals and go free, or at most keep in hiding until the war is over and his brigade disbanded, and he can laugh the law to scorn. For the Act of 1863, it is claimed, is exclusive of all right of the State to touch him. The military authority may turn him over, saying we have no time to punish him here, We can not leave our officers here to try him; we can not take the witnesses with us. The public sense would be shocked if here, a thousand miles from a hostile soldier, we should try him by court martial. All your machinery is in order, try him according to the normal methods. No, it is said the law of 1863 is exclusive. It can not be done. Where is the need of such a construction?

Every statute in derogation of the common law is to be strictly construed. How much more one which does away trial by courts and jury and in the vicinage. On what principle can such a law be favored?

This act provides that the trial shall be in time of war. In time of war these offences *shall be punishable* in this mode. It does not apply expressly alone to offences then committed, but to punishments then inflicted. This may seem to be a superficial and *cortical* construction. But it is not. It is the exemption from being amenable to civil influence that is material and not

alone the punishment of offences *committed* while the war is flagrant. The Government wants the man and none can take him. In time of war these offences *shall be so pnuishable.* This does not, perhaps, direct that any offences committed before the war may so punishable, though as I say, say such a construction would be founded on strong reason—but it certainly does not mean that offences then committed may be so punished after the war is ended.

Act of 1866 only strengthens my view, if in time of war smaller offences are condoned. It may be said that this act was for use in the Southern States, but it will be seen at once that it applied to the soldier wherever he was, whether remote from the seat of war or in the midst of the contending armies—as much in New York, Massachusetts and Ohio as in Tennessee or Louisiana. It applies in time of war not at the seat of war, to every soldier and not to soldiers in particular localities.

Now let us proceed to another point. Is there anything in the question of exclusive jurisdiction in the United States Courts. Suppose the army of the U. S, in our State capitol, marching to subdue an insurrection in Alabama, and a regiment of Tennesseans are mustered in there, and before they get to Franklin, (in time of insurrection as it is) one of these men straggles and robs a citizen, and he is taken and tried by Court Martial and punished, under the act of 1863. Is that for the breach of military discipline, in straggling and marauding, or is it for the offence against the laws of Tennessee? Is that an act for the government and regulation of the army which the Constitution prescribes and empowers, or is it to enforce the laws of Tennessee and punish offences against its government. Now in ascertaining this it does not matter whether it defers to Tennessee laws or utterly disregards them. If it made murder a mere bagatelle to be punished by one day's imprisonment or added the horrors of being drawn and quartered, if the power is exclusive, it excludes as much by the one as the other. It is not a question of good faith, nor of policy, nor of evasion, nor fraud. Nothing but a question of *exclusive* power, and the *exercise* of it as such. Has the United States the exclusive power to punish people in the land and naval forces, or the power to say to the States when I lay the finger of punishment on this man in the

regulation of the land forces you are forever excluded from touching him for any offence against your law however heinous it may be? If exclusive power, then it must be exercised, and when exercised by the passage of the law it is not a question of joepardy but of jurisdiction in the State Court. It was certainly in time of war and insurrection when the Federal army was marching through Kentucky. Aye even when they were gathering in Illinois and Indiana, it was "*in time of war*," and the act of 1863 was in full force wherever there was an army or a squadron or a battallion. Now suppose a soldier robbed a citizen of Indiana or New York. Was the jurisdiction of the military to punish him *exclusive* of all power in the States to vindicate their violated law, not only then, while the army could refuse to yield him from service, to be subjected to punishment, but through all time. If they alone had the power to punish; if they alone could exercise it, it is not a matter of the least consequence whether they did exercise it or not. I am now discussing the exclusive power. If they had the *only* power then the State had none at all. This is a question of two-fold character. 1st. Had Congress, by virtue of its power to regulate the land and naval forces, the power constitutionally to deprive the State of the right to punish its own citizens for breaches of her own laws. 2d. Did Congress as a matter of construction of this statute mean to do this thing? If she meant it to apply in New York and Massachusetts, and Indiana and Ohio, then the same words would extend the same exclusive rule to Kentucky and to Tennessee, no more, no less.

Our position is that such is not the power conferred on Congress. If they had expressly so declared it was not within the power granted by the State to Congress, by the clause to enable them "to regulate the land and naval forces." And if it had been so granted Congress did not by law applicable alike to the most loyal as well as the most resisting State, intend anything of that kind. It is not a question whether a different *rule* of *administration was applied* in States occupied or not, that is a separate question. Now we are on the question of the exclusive operation of this law over the whole United States, from "the costly iceburgs of Alaska to the flowery shores of the South-

eastern peninsula." Was it exclusive? If it was anywhere it was everywhere.

I will spend a word more in repetition. The act of 1863 makes murder committed by a soldier an offence against the rules for the *government and regulation* of the army, and it fixes the punishment as not less that of the State where it is committed. This it does in virtue of the Constitution of the United States, which allows Congress to make rules for the government and regulation of the land and naval forces; not in virtue of any clause allowing them to vindicate the injured sovreignty of States. It is a punishment of murder as a breach of military good conduct. Shall the law-military punish the marauder, or the straggler who merely straggles or merely interferes with private rights of property and leave unpunished the murderer? Every act of marauding is an act against the law of States. Suppose Congress made the minimum for marauding to be regulated by the punishment affixed by States to the same acts committed by the marauder. Would that make the offence less against the military law? Did not the military law always prohibit murder? Yes, but it declined to punish it in time of peace leaving it to the civil authority to execute its own law upon it. But in time of war it became necessary to make it a military offence. Now is it distinguished as it is by the State law, into the several grades? It adopts no State definitions, it goes into no discriminations, it says nothing as to the offended diginity of the States, the peace thereof or their statutes, But it defines certain offences as subject of military jurisdiction previously dealt with exclusively by the civil courts. More than this it does not affix the punishment which the States enforces. The punishment shall not be less. Is it to execute a law to exceed its punishments. To execute a law its limitations must he regarded in all directions not in one merely. Not downward only. To exceed the severity of a State law is not to execute it. The act was passed solely as a law for the *government and regulation* of the *army*. It could not be done in any other view or for any other purpose; that was *ultra vires*; to try and punish offences against the State was not given to them. As I said before if they had made the punishment by 30 stripes it would be no more a military offence that it was by that act.

The measure of punishment in murder by the State law would not, if adopted, define it by that law.* Suppose a State law defined robbery to be the taking from the person without force would that make the case intended and punished by the act of Congress? Of course not. Suppose by anomalous legislation in one State it was called robbery simply to steal, would that act of Congress adopt that law and punish as robbery simple larceny? Suppose, further, a State made breach of trust robbery, would that act of Congress operate to enforce that State law? If it was enforcing State laws it would. But if it has a law of its own and robbery and murder have any definite and uniform meaning as universally understood then it would not act by any such exceptional definition.

One word further on the exclusive nature of the law.† I repeat, it operates equally and alike everywhere in the United States, in time of war.

Now, to test further the doctrine: Suppose this law was not of universal application, then where did it apply, where not? It applied to the army wherever it was. Now suppose it had been passed before a soldier was in Virginia or Kentucky—did it apply to the army? Was it not in time of war? Kentucky was a loyal State. Did it apply when the Federal army was at Bowling Green? Did it enable it to punish as they came against Fort Donaldson—or did its operation commence when the army crossed the line of Tennessee? Did it surround the army and march with it like a pillar of cloud by day? How far did its ægis extend? If Bragg marched into Kentucky did the army regulation follow the Confederate army and so make murder a military offence in Kentucky when it was not so a week before? When Lee was striking at Gettisburg did it cover Maryland? If Grant sent troops from Vicksburg to Virginia by the Northern railroad would the law punish murder by a soldier as a military

* Murder.—It is not an an offence punished by the law of Tennessee at all. Murder in the first degree is punished. Murder in the second degree is, but there is no such offence as that punished by Congress. *Simple murder.*

† But this question also is discussed and decided by Judge Hawkins in Rankin vs. State at p. 150—4 Caldwell. Is this within the *judicial power* of the United States. Read the 2d Art., and remember that it is a government of enumerated powers, and see whether it is within the power af Congress to enforce the State law. Congress cannot confer powers on a State court to execute laws of Congress—(17 Jones, 26.) Can it confer power on a U. S. court to execute State laws?

offence? If the armies of the confederates occupied Maryland and stood on the line of Pennsylvania, was the army which stood on the left flank in Maryland subject to one law and that which stood on the centre and right under another law? If they were under the same law, then how far into Pennsylvania did that law reach? To Erie or to Philadelphia? If a force was sent a cross to watch the machinations in Canada were they exempt *in transitu?* If there is no definition in the law but that it applies to all soldiers *in time of war*—the courts cannot cut it down —or make lines it did not make. In 1863 Congress had learned to make lines. It marked the line of the States in insurrection. It distinguished them in commercial regulations—but it made this law apply to the army everywhere. It needed to hold out condign punishment over the soldier everywhere. But it did not mean to relax all the bonds of civil sanction by States and by State laws. Both were needed; both were used.

It may be proper here to mention Milligan's case to observe that it does not in the least touch the act of March 3, 1863, on the subject of the military offences of murder, robbery, &c. That was a prosecution against a *citizen* not a soldier, and the act there spoken of was the habeas corpus suspension. The court there say some things as to the power of the United States in a State occupied by the army, but nothing at all in conflict the views we here present.

Now for a few words on military occupation. Let us see what is the principle of the defence. It is said that military occupation suspends the law of the conquered. I do not so read the great writers on international law. But let us test it. Tennessee was occupied. Was the law of contracts suspended? Not by occupation, certainly. By regulation many rights of contract were torn away, and regulations imposed. But only so far was the power to contract suspended. Descents were not changed, the law of distribution remained. Rights of property. Were not taken away. Even slaves proclaimed free were never so held until the constitution of the State did what the proclamations were impotent to legalize. Where was the suspension? Were all the criminal laws suspended? If they were suspended as to Garber, * and Whiteside—and Charles Davidson, as to

* These are cases tried in Tennessee which occurred during this period.

every citizen for every offence committed by Confederates while they held the State against each other or their neighbors, then there was a suspension of the laws of Tennessee.*

If there was no general suspension as to people out of the army—neither was there any more a suspension of the laws of Tennessee than there was a suspension of the laws of Kentucky while the army was there—as to people in the army. If these laws were suspended by military occupation *ipso facto* it was either total or partial. Now if partial how was that partial suspension defined? By the articles of war? No. For they operated in Alaska or in Maine, wherever the costly machine extended our arm or sent a scout, and as it did not suspend the laws of Ohio or Kentucky, neither did it by the same words suspend the laws of Tennessee. By what then was this partial suspension defined. We have shown that it was not total. It could not be partial without something to define it. It did not extend to free the negroes. It did not of itself suspend all civil law. It could not, therefore, have suspended the right of the State to punish all criminals. As well might you say that if to-morrow a pestilence should leave the city of Nashville without a judicial officer, that no offence against her city government committed while in that condition could be punished after new officers had been put in because at the time of the offence she had none. Then if offences in general were not obliterated by the occupation, Tennessee as to offences retained her former laws and there was no effect produced except a temporary deprivation of the power to punish for want of the means, the organization. What consequences would follow any other doctrine. Could you punish any any offences before the war? How bridge this gulf? Could you punish offences during Confederate occupation? Was that another Tennessee *de facto*, or was it the *de facto* Government of the same State? Is it one State of Tennessee with

* If the prisoner's counsel put the case upon the ground that the *military* were the *de facto* government of Tennessee, then I say the military never assumed that it was Tennessee. Now suppose the military government of Gov. Johnson to have represented the State, did the army represent the military government? Did he have the power to pardon? If the trial was one which would not have barred a trial in Ohio it would not have barred a trial by the de facto government of Tennessee the military government. Where is the act of suspension by the military of the laws of Tennessee or a substitution of a regular court martial for any other mode of trial:—trial by jury?

a period of disorganization, or is it two States separate, distinct, with an intervening period of non-existence?

We produce two cases which show clearly that an offence by a soldier, in a foreign country, during war can only be punished by that country after the soldier's discharge. One from France one from the Attorney General of the United States. Now if Mexico only could punish an offence by an American soldier against an American soldier, during American occupation—If Spain alone could punish a French soldier for an offence committed in Spain during a French occupation, what becomes of a suspension of the laws by military occupation in Tennessee? It does not apply either to crimes or to civil laws.

But it may be said that the cases of Rice vs. The United States, 4 Wheat., 246; Cross vs. Harrison, 16 How., 164, are against our views. These were revenue cases, and the first of them is put upon very narrow, and I might say, technical grounds. That Castine was not in the United States when occupied by the British and that the goods afterwards coming into the U. S., with the territory, were not then imported. The other case is in nothing inconsistent with our view, but merely affirms the right of the military authorities to collect duties at the port of San Francisco, without special legislation to provide for it. Without going into the difference between the act of a foreign conqueror, and the restoration of the authority of the Constitution, it is enough to say here that we have shown that Congress did not make any regulation suspending the municipal laws of Tennessee, and that no person exercising military power is shown to have done anything of the kind. If our construction of the law of Congress is right, Congress took no action on this subject. No usurpation of such power by the military commander in Tennessee is shown. If it was we would say it was utterly without authority in the act of Congress. But it is needless to discuss this power or the power of Congress if it was not exercised. We utterly deny the doctrine that every act of every military Satrap who clothed in a little brief authority chose to oppress the women and children of the country and the non-combatants, had any validity, and we hope to see the day when by universal consent, the decrees of all military inquisitions shall be put upon the footing on which the writer in the Law

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Register puts them, quoting the words of the U. S. in Jecker vs. Montgomery, 13 How. 698, 'that their duration is limited to the moment and their authority to the bayonet.' The Supreme Court of Tennessee so held in an opinion delivered by Judge Turney, where a military requisition was made upon a citizen of Sumner county to indemnify a citizen for losses during the war. Draper vs. Hale. But there is nothing in the laws of Congress or the acts of the military to indicate any different intention as to the result of this case from what would have been the result in New York or Ohio.

But one of the most interesting questions in this case remains to be considered. The District Judge of the U. S, having under the supposed authority of the act of Congress of Feb. 5. 1867, issued a habeas corpus, upon the idea that the def't was restrained by the State Courts of his liberty *in violation of a treaty or law of the United States*, ordered him to be discharged of this case but left him in custody under another charge for an offence committed when he was no longer a soldier. The Supreme Court of Tennessee finding the def't's case pending by appeal in their Court, and the prisoner in their jail, proceeded to try and dispose of the cause. If Judge Trigg had the jurisdiction of the cause then it would seem to result that the act of the Supreme Court of Tennessee, was in violation of the provision of the Hab. Corp. Act of 1867, which declares that the action of State Courts after the Courts of the United States shall have acted shall be void.

On the other hand of the action if Judge Trigg was *coram non judice* then the judgment of the State Court so declaring was right and valid. It is perfectly clear from the Record in the Hab. Corp. case that on the construction that we propound the case made is by its facts one in which the State is not doing any act violative of the Constitution of the United States, or any law thereof, and is one of which Judge Trigg had no jurisdiction.

The jurisdiction of the U. S. Court depends upon the principles we have already so elaborately discused. If the act of 1863 was intended to, and legitimately could operate to exclude the jurisdiction of the State Court over her own citizens and their crimes, and could and did make it a violation of the Con-

stitution or laws of the U. S., for the State thereafter to punish the offender against her laws. then the jurisdiction existed in Judge Trigg, and possibly his judgment is an insuperable bar to the action of the Supreme Court of Tennessee, and of this Court, a result most unseemly; whereby the act of the Judge of lowest grade in the U. S. shall stay the hand of the highest State Court and override the solemn judgment and the revising power of the highest Court of the U. S. itself.

If the points we have discussed heretofore satisfy the court that the act of 1863 was not intended throughout the U. S. to take from the States all power to punish offenders, while the military chose not to insist upon their power, then of course, there is nothing in the law of the U. S. of which the trial of Coleman is violative and the case made by the record not being one of an act in violation of the Statute law, or the Constitution of the U. S, there was a case to which his jurisdiction did not attach.

But even if the law of the U. S. was intended to assume the whole power to punish all such offences as offences against the State; still there would remain the question, to what authority is the defendant to resort for his protection. The Constitution of the U. S. protects the party from being twice put in jeopardy for the same offence. I have shown by authority that this only protects him from a second jeopardy of the courts of the United States. The Constitution of the State gives him the same protection, But for the administration of those protective provisions he can not under the Hab. Cap. act of the U. S. appeal to the Courts of the U. S. He is not in such case restrained in violation of the Constitution of the U. S. but of the State Constution. His appeal then is to the State jurisdiction to enforce her own Constitution and grant him the immunity which it secures.

In some of the discussions growing out of this class of cases in Tennessee the idea was suggested that the case might be like that of an act committee in Spain when the country was occupied by Napoleon. The conqueror necessarily would administer the Spanish law there and punish offences. The question was asked, suppose a Spaniard had been so punished by the French in Spain would Spain have a right to again punish him? The

answer was' suppose that of very right she could not; to whose law must he look to for protection, to the law of Spain or to the law of France? If France assumed to administer the laws of Spain her act could have no higher authority that the act of the regular Spanish courts in time of peace, and the validity and effect of them must be determined by the same jurisdiction that would have acted upon a like act of a regularly constituted court.*

The United States as *conqueror* must stand in the same attitude as France to Spain. As having a *peculiar relation* to the States she must stand in the position in which the Constitution places her. Her Constitution and laws give her no power to interfere with the action of the State courts in regard to domestic and internal administration. While we must recognize the right and propriety of the U. S. protecting its soldiers and agents for acts done as such, against the action of all other powers, we cannot see the propriety or the power to protect every employe in all his acts not having relation to his agency for the U. S. Of what he does for the U. S. perhaps it alone should have the jurisdiction of his person. While in its employ it may clearly keep possession and control, but if while acting for the U. S. in a particular public capacity he in his private capacity of citizen merely or man, contracts marriage, assumes obligations, commits torts, perpetrates frauds, or is guilty of felony, the right of the U. S. to protect him from the action of the State which of right treats the citizen for such acts is denied.

It may be proper to remark though in the view I take of this case it can hardly be controlling, that the act of the Court Marshal in this case seems never to have been completed or to have become a judgment, for the want of the approval of the commanding general. The act of 3 Mar. 1863, § 21, provides that no sentence of death for murder s all be carried into execution unless the same shall have been approved by the *commanding general in the field.* Until this approval is obtained the convic-

* "The courts established or sanctioned in Mexico during the war, by the commanders of the American forces, were nothing more than the agents of the military power to assist in preserving order in the conquered territory and to protect the inhabitants in their persons and property, while it was occupied by the Americans. * * * They were not courts of the United States," Jecker vs. Montgomery, 13 How. 498.

tion is not final. If then this case depends at all upon the exercise of jurisdiction, the incomplete proceedings, broken off in the midst, would be ineffectual as a bar.

And now at last after many years tossing to and fro I cheerfully consign this great question of the right of States to execute their own laws and to punish offences against their own polity and statutes to that high arbiter, to whose decision it is assigned by the great compact under which these States become a nation. To that decision of an arbiter fit to settle great questions of international magnitude and import I confidently submit the rights of the State I represent, sure that it will be considered with impartial wisdom and happy that all can repose upon its controlling authority.

J. B. HEISKELL.

I append an argument of Hon. J. G. Wallace, made in a case in a State court, on some of the questions involved in this case in which authorities are cited for many of the positions that I have considered upon argument only.

Mr. Whiting, in his work on the "War's Powers under the Constitution," after defining military crimes, states that "such crimes may or may not be offences against statutes. The fact that an act is against municipal as well as martial law, even though it may subject the offender to indictment in civil tribunals, does not relieve him from responsibility to military power." *Page* 188.

Again, on the other hand, in his chapter on military tribunals, he says, "The same transaction may constitute an offence against municipal as well as military law, and, in such cases, the offender is liable to punishment by both." *Page* 289

The Supreme Court of Tennessee, in the case of *the State vs. Rankin*, 4. *Coldwell*, 145, have held that a conviction or acquital by a *Court Martial* of the United States was no bar to another prosecution by the State of Tennessee, for the same act—that the same act may be the violation of the laws of two sovereignties, and, as to each, be a distinct offence.

This must be conclusive of this case, unless a difference can be made by the fact, that the crime of Rankin was committed *after* the restoration of civil authority in the State, and the case now on trial occurred *before*, and during the military occupation of the country by the United States forces.

Such a difference can be supported only upon the idea, that, during the military occupation, the sovereignty and laws of the State ceased to exist, and the military power was not only paramount, but swallowed up and destroyed the civil government —that after the States became public enemies, not only their

lines of boundary were wiped out, but they also lost all rights, State and National.

This is contrary not only to every principle of international law, but also to our whole system of constitutional government and the theory on which the war itself was conducted by the Government of the United States.

Whether we take the position assumed in the resolutions of Congress and the proclamations of the President of the United States in the beginning of the war—that it was not being waged for conquest or subjugation, but only to enforce the laws and restore the States to their original relation to the general Government, or the position afterwards assumed, when the entire circle of Southern States, *as States*, abandoned the Union and set up a new government, for themselves—that they were no longer merely insurgents and rebels, but a belligerent power; the same conclusion must follow. The sovereignty of the States continued and never ceased to exist, whether we consider them as belonging all the time to the Union, or that their legal connection therewith was, at any time in fact dissolved, they were, whatever may have been their real status, accorded belligerent rights, and were recognized *as States* or political communities, over which, when and as soon as a possession was obtained, functionaries were appointed for carrying on local government. And when the United States forces took military possession of their territory, they were subject to only such rules of military occupation as international law authorizes.

"In cases of occupation by the military forces of a State, neither the sovereignty of the State occupied, nor its municipal laws are *ipso facto* suspended or destroyed." *Halleck.*

It is true, the municipal government may be interrupted, and its functionaries for the time suspended, but the moment the force working such interruption or suspension is removed, the government, *proprio vigore*, returns to its normal condition.

Mr. Halleck, who wrote nothing in disparagement of the military powers of the United States during the late war, in his work on International Law, at *page* 780, § 5, holds that "the political laws, as *a general rule*, are suspended during the military occupation of a conquered territory"—that is, as he explains it, "the political connection between the people of such

territory and the State to which they belong, though *not entirely severed*, is interrupted or suspended so long as the occupation continues." And without controverting this proposition; if we regard the action and conduct of the President and Congress of the United States towards the State of Tennessee during the war as determining the political relation or connection of this State to that government during that time; then "*the general rule*" referred to by Gen. Halleck had no application to this State, and our relations, as a people and State, to the general government were, not only "not entirely severed," but were not even "interrupted or suspended" during the military occupation. For representations, one in the popular branch, and another, the representative of the State itself, in the Senate of the United States, were permitted to retain their seats, and were recognized as the representatives of one of the States of the Union. When Andrew Johnson was afterwards appointed Military Governor, he was appointed Governor not of a mere *territory* subdued by arms, but of *a State* already possessing a political existence and a municipal code. The laws and constitution therefore belonging to the State were recognized as still continuing, and were never abrogated by military power. Even the war measure of the Commander-in-Chief for the emancipation of the slaves was not regarded as abolishing the tenure of the owners or the legislative enactments for the regulation and protection of that kind of property; but a new constitutional amendment, both of the State and of the United States, was deemed necessary for the repeal of laws existing before and during the military occupation. And has not this court, notwithstanding the proclamation of the military commanders, in repeated instances, sustained the claims of the owner for the hire of his slaves during the very period the martial edict declared they should not be held to involuntary service? Though Mr. Halleck holds the political connection between the people and the State to which they belong is interrupted and suspended during the continuance of the military occupation," he grants, that "the *municipal* laws of a conquered territory, or the laws which regulate private rights, *continue in force* during military occupation, except so far as they may be positively suspended or changed by the acts of the conqueror." —781, sec. 5.

He admits, that "neither the civil nor criminal jurisdiction of the conquering State is considered, in international law, as extending over the conquered territory during military occupation." He says, "although the National jurisdiction of the conquered power is replaced by that of the military occupation, it by no means follows, that this new jurisdiction is the same as that of the conquering State." "Hence, the ordinary jurisdiction of the conquering State does not extend to actions, whether *civil* or *criminal*, originating in the occupied territory." And he quotes Ortolan, that "military occupation and military government are not sufficient to change the national jurisdiction, and to substitute the jurisdiction of the occupying State for that of the territory temporarily occupied."

This we consider conclusive of the point under consideration, that neither the sovereignty nor the laws of the occupied State are destroyed or cease to exist during, or by reason of such military occupation.

But it is contended, that the military occupant, holding a country in final possession, has the belligerent power to organize and enforce the government of the people within the country so occupied; and, as a means of so organizing and enforcing the government, may rightfully appoint suitable functionaries. *Isbell vs. Farris*, 5 *Cold.*, 426. *Heffernan vs. Porter*, 6 *Cold.*, 395.

But this doctrine only sustains the position that the military occupation does not destroy the State sovereignty or the force of the State law. The *functionaries* necessary to keep the machinery of government in motion and to inforce the laws having disappeared or suspended, the military commander, under his war powers, *improvises* special functionaries, tribunals and agencies for carrying on that government and enforcing its laws.

This, we consider, a direct recognition of the existence and binding force of the State laws, notwithstanding the suspension of its ordinary tribunals and the military occupation.

It may also be conceded, in this case, that the military commanders may either leave the municipal laws of the country in force and create new tribunals for its administration, or he may suspend those laws and enforce others. That "the trial and punishment of crimes may be left to the ordinary courts and authorities of the country, or they may be referred to special tribunals

organized for that purpose by the government of the military occupation; and where they are so referred to special tribunals, the ordinary jurisdiction is to be considered as suspended *quoad hoc.*" *Halleck*, 683, sec. 6.

It is not necessary, for the purposes of this prosecution, to dispute the powers exercised in some sections and districts of the country during the late war by the military authorities, to organize special courts of justice for the trial of either civil matters or criminal offences. The facts of this case do not require it. But it might be observed that the Judge Advocate General of the United States himself—the chief officer of the new Bureau of Justice, pronounced such courts "an anomalous and irregular tribunal, entirely unauthorized by military law," and earnestly advised that they be dissolved. *See Holt's Rep, of July and Oct* 1863.

But the whole theory of this military jurisdiction proceeds upon the idea and upon the recognition of the continued existence of the government and municipal law of the occupied country which they thus assumed to administer.

If such a court of justice for the trial of criminal offences had been organized and established in the country where this crime was committed, before which this offender had been regularly arraigned and tried, and convicted or acquitted, *for a violation of the laws of the State*, his plea might then assume a different importance.

But he was not tried by any such tribunal, nor for any such violation of the municipal law. No such tribunal is alleged or shown to have ever had an existence within the territory or district where this offence was committed. On the contrary, the plea itself discloses that he was tried *as a soldier*, before a *military* tribunal and for a *military* offence. The court before which he was tried is shown to have had no jurisdiction of crimes and offences against the municipal law, or of persons other than those in the military service. (See act of Congress, approved March 3, 1863, from which the jurisdiction of the court over the crime of murder was derived.)

This act was intended expressly for *soldiers* and not for citizens. It confers on *courts martial* no power to try and punish a citizen or other person than those in the military service, and

confers no jurisdiction over offences at common law, or under the municipal law, or any other than violations of the military law.

To constitute a good plea of former conviction or acquittal, if such could be had before a military court, it must be averred and shown, that the trial was had before some tribunal having jurisdiction both of the person and of the offense—that is, before some court established by the military authorities *in lieu and having the jurisdiction of the ordinary courts* for the trial of offenders generally for crimes committed against the municipal law of the country.

The doctrine of *Rankin's* case is, that the acquittal or conviction of a *soldier* before a *court martial* for a *military* offence, (and murder is a violation of the military as well as municipal law) cannot be pleaded in bar of an indictment before the ordinary courts for a violation (though it may be the same act) of the municipal law of the country. That, being a soldier, he was amenable to and could be tried and punished by the military courts under the military law; and being a citizen or "person," he was amenable to and could be tried and punished by the civil courts under the civil law also; and that it would be no violation of the 5th amendment of the constitution.

Whether a trial before such a special tribunal could be pleaded to the jurisdiction of the ordinary courts afterwards re-established, we need not stop here to consider, inasmuch as no such court is shown to have tried this case; but that a trial before a *court martial*, established exclusively for and having jurisdiction alone over persons in the military service and offences purely military, can interpose no such obstacle, I think too clear for argument.

But passing from the question of any supposed difficulty to this prosecution by reason of the conviction before the court martial, the question arises, can the prisoner be tried and punished now by the courts and under the laws of the State for a crime committed during the military occupation, and at a time when there was no civil authority to enforce the laws? In other words, do the laws of the State apply to crimes committed *flagrante bello*, and while the State tribunals were powerless to inflict punishment, or, indeed, when there were no State tribunals at all?

Crime is the transgression of law. If there was any law of the State in existence during the military occupation forbidding the designated crime, and if that law was not suspended or annulled by the military commander, then the murder comitted by the prisoner was a violation of that law and was a crime.

We have seen that the military commander did not suspend the laws of the State, but, on the contrary, that the law forbidding murder was recognized, and that no special tribunal was organized by the government of military occupation for the purpose of enforcing those laws and trying and punishing offenders against it, so as to operate as a suspension *quoad hoc* of the ordinary jurisdiction. Only the rigor of the law, therefore, having been suspended by reason alone of the absence of functionaries to enforce it, the moment the rigor is restored by the re-establishment of tribunals and agencies to administer it, it takes cognizance of and punishes violations no matter when committed. Nothing can deprive the ordinary courts of power to punish offences committed during the military occupation, but the fact that some tribunal of competent jurisdiction did in the given case, exercise that jurisdiction during that period.

See the case referred to by Halleck at page 782 of his work, related by Ortolan, of a Frenchman who was charged with a crime in a French court committed in Spain during the military occupation of that country by France in 1811. The jurisdiction of the French court was denied, as will be seen by looking into the trial, upon the ground that the courts of Catalonia alone had jurisdiction.

The same doctrine was held by Attorney General Toucey in the case of Capt. Foster for a homicide committed in Mexico during the military occupation of that country by the armies of the United States. *See* 5 *Vol. Attorney General's Opinion*, 55 56.

And upon this point, is Jecker vs Montgomery 13 How. 498, an instructive case. During the Mexican war, it was incon venient to send home for adjudication the prizes captured by our naval cruizers in the Pacific coast. At the request of the Naval commanders in that station, the President of the U. S. erected a prize court at Monterey, a post of the enemy in our possession and appointed a Chaplain from one of the ships to act

as Judge, and exercise admiralty jurisdiction in cases of capture reporting his proceedings to and holding all prize money for distribution upon the order of the Secretary of the Navy.

A captured vessel having been condemned and sold under proceedings before this court, owners of the cargo brought their action to recover its value against the commander of the ship making the seizure, before a District Court of the United States. In giving the opinion of the Supreme Court, before which the case came on appeal, Chief Justice Taney remarks: "Under the Constitution of the United States, the judicial power of the General Government is vested in the Supreme Court and in such inferior courts as Congress shall from time to time ordain and establish. Every court of the United States, therefore, must derive its jurisdiction and judicial authority from the Constitution or the laws, of the United States; and neither *the President nor any military officer* can establish a court in a conquered country, and authorize it to decide upon the rights of the United States, or of individuals in prize cases, nor to administer the laws of nations. "The courts established or sanctioned in Mexico during the war, by the commander of the American forces, were nothing more than than the agents of the military power, to assist it in preserving order in the conquered territory, and to protect the inhabitants in their persons and property, while it was occupied by the American arms. They were subject to the military power, and their decisions under its control, whenever the commanding officer thought proper to interfere. *They were not Courts of the United States*, and had no right to adjudicate upon a question of prize or no prize; and the sentence of condemnation in the court of Monterey *is a nullity*, and can have no effect upon the rights of any party."

As Commander-in-Chief of the Army and Navy of the United States, the President may declare the existence of Martial Law over territory disputed by armed opposition to the National authority, when and where he deemes it necessary. He may, under certain circumstances, silence all law in a given district and govern it by his military will. This will may extend itself at the pleasure of the commander to cover and determine all rights of private property and civil controversies.

"But when the exigency has passed, and the civil authority

resumes its sway, their private rights would be decided without regard to prior military adjudication. Martial Law, when pushed to this extent, is the law of the moment and the bayonet. Its stability is limited by the one, its authority by the other."

The cases of Castine, Tampico, and Cross vs. Harrison, so often quoted by the international law writers, whose books were gotten up during the war and whose object was to strengthen the hand of the military commander and to sanction acts of usurpation whose sanction could be found no where else, were mere revenue regulations enforced in ports of the enemy on the commerce of the world This was simply the exercise of a plain and undisputed war power, to cut the sinews of war by seizing the revenues of the enemy. Castine was American port in tempo. ry British possession. Tampico and San Francisco were Mexi. can ports in American Military possession. During the period of this possession if the military commander assume to make commerce tributary to him instead of the Government of the country his power, while he exercises it, is exclusive. But that is a totally different case from one where the commander takes no steps to suspend the laws of the country over civil rights and criminal offences.

Such is clearly the doctrine adopted and acted upon by this court and by all the inferior tribunals in this State since the re-establishment of civil authority in the State. By referring to reports of this court for the last five years, repeated instances are found in which the courts of the State have assumed and exercised jurisdiction over the offences, both under the statute and common law committed during the military occupation and some of them under the very shadow of military authority. They have, in no instance, inquired whether the crime was committed before or after the restoration of the civil authority, or during or since the military occupation. In only two vols. of Coldwell's Reports, I found as many as 12 such cases reported, to two only of which I will detain the court to refer.

Charles Brothers, 2 *Cold.* 201, was indicted in the Circuit Court of Rutherford county in 1865, for horse stealing committed in April 1864, just two months after this murder was committed. His case illustrates two points in connection with the regard in which the military occupation of that period is held

by this court. 1st. That it did not operate as an exclusion of State authority, and 2d. That the edict of the military commander had no effect to change the condition of the slave. The case of Charles Davidson, 2 Cold. This party was also a negro slave and committed a rape in March 1864, in Maury county, just one month after this murder. The judgment of the Circuit Court in arresting judgment was affirmed, not for want of jurisdiction of the court either as to the person or the offence, but the case was remanded that the party might be again indicted or discharged by the Circuit Court.

If the military occupation in the act of Congress of 3d of March, 1863, had the effect contended for by counsel to exclude the jurisdiction of the cause, by what right and authority did the courts of this State assume to try to punish any one for offences committed during the period of that exclusion? If the argument be correct, that by the conquest of a country, the old power is *extinguished* and the new one of the conqueror is instituted in its place, then when these dozen crimes reported in Coldwell of which this court took cognizance, were committed, there was no law here but the law of the conqueror, and no government but that of the military occupant. Does this new, re-established civil government; then, do these courts assume to redress wrong, and punish offences committed against the Military Government? That necessarily must be the case, if there was no civil government, no municipal law, no sovereignty to be offended. If they were "extinguished," there was no government, no law, no sovereignty save that of the military commander against which an offence could be committed. But our Courts and our Legislature have ever since the reorganization of the State government assumed that there was no such extinguishment, that there were laws and a sovereignty to be offended, and they have, as we have seen, not hesitated to take cognizance of offences against them during the period of the supposed suspension or extinguishment. The Convention which met in this capitol in February, 1865, to organize the government and *amend* the Constition, proceeded upon the same idea. They recognized the existence of the State as a political community, the existence and binding force of the Constitution and laws, and of the existence of the sovereignty of the people whose necks were even then under the heel of the military.